10594

(16,784.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 232.

ROBERT M. WHITE, PLAINTIFF IN ERROR,

vs.

AUGUST F. LEOVY, ROBERT S. LEOVY, AND HENRY J. LEOVY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 STATE OF LOUISIANA:

Twenty-second Judicial District Court for the Parish of Plaquemines.

Record transferred from the twenty-second judicial district court in and for the parish of Plaquemines.

Petition of Plaintiff.

Filed July 7th, 1893.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

To the Honorable Albert E. Livaudais, judge of the twenty-second judicial district court in and for the parish of Plaquemines:

The petition of Robert M. White, whose domicil is in the parish of Plaquemines, respectfully shows—

That he is the owner and in lawful actual possession of the following-described real estate, to wit:

"All the unsurveyed marsh west of lots fronting on the right bank of the Mississippi except section No. 16, in township No. twenty-two south, range No. thirty-one east, in the southeastern west of river land district, 3,840 acres, according to the official plat of survey in the State land office."

Petitioner avers that he acquired said property by purchase from the State of Louisiana and by virtue of patent No. 4058, issued according to law, and he alleges that said property is worth the sum of two thousand five hundred dollars. Petitioner avers and charges that Robert S. Leovy and August F. Leovy, residing in the parish of Plaquemines, and Henry J. Leovy, who resides in the parish of Orleans, have illegally conspired and combined together for the purpose of harassing your petitioner in the enjoyment of his said

2 property, and he specially avers that, combining together for the purpose, they have wilfully and maliciously slandered petitioner's title to said land and have publicly and privately stated and announced that petitioner has no title to the same; and petitioner specially avers that they have disturbed and will disturb petitioner in the enjoyment, ownership, and possession of his said land.

Petitioner alleges that on account of said illegal acts, slander of petitioner's title, and disturbance he has suffered damages in the sum of two thousand dollars, and if they are not prevented from slandering petitioner's title and disturbing petitioner in the exercise and enjoyment of his rights thereto, and from removing and taking and cutting willows or other property therefrom, which petitioner believes they will do, petitioner will suffer great damage and irreparable injury, and that a writ of injunction is requisite and necessary to preserve and protect his rights in the premises.

Wherefore he prays that defendants, August F. Leovy, Robert S. Leovy, and Henry J. Leovy, be cited to appear and answer this petition; that a writ of injunction issue to each and all of said defendants prohibiting and restraining them and each of them from entering on any part of the lands above described and from denying petitioner's title to the same, and from taking, cutting, or removing any willows or other property on and from said lands or from attempting to do so, and that they and each of them be prohibited and restrained from disturbing petitioner in the enjoyment, possession, and ownership of said property, and that after due proceedings had said injunction be perpetuated and petitioner do have and recover judgment against them *in solido* as damages for the sum of two thousand dollars, with legal interest from judicial demand, and they and each of them be declared to have slandered petitioner's title to the above-described property, and that
3 petitioner be maintained and quieted in his possession thereof; and he prays for all costs and for all general and equitable relief.

(Signed) EDWIN H. McCALEB,
Attorney for Petitioner.

Robert M. White, being duly sworn, deposes and says that he is the plaintiff in the above cause, and that all the facts and allegations in the foregoing petition contained are true and correct, so help him God.

(Signed) ROBERT M. WHITE.

Sworn to and subscribed before me this 3rd day of July, A. D. 1893.

GEORGE C. AUDRY,
Notary Public.

Order.

Let defendants, August F. Leovy, Robert S. Leovy, and Henry J. Leovy, show cause on Saturday, July 8th, 1893, at 10 o'clock a. m., why an injunction should not issue herein as prayed for.

Parish of Plaquemines, July 7th, 1893.

(Signed) A. E. LIVAUDAIS, *Judge.*

Order.

Let a writ of injunction issue herein, as prayed for in the original and supplemental petition filed herein and according to law, upon plaintiff furnishing bond in the sum of one thousand ($1,000.00) dollars.

Parish of Plaquemines, July 8th, 1893.

4 (Signed) A. E. LIVAUDAIS, *Judge.*

Supplemental and Amended Petition of Robert M. White, Plaintiff.

Filed July 8th, 1893.

To the honorable judge of the 22nd judicial district court:

The supplemental and amended petition of Robert M. White, plaintiff herein, respectfully shows—

That he desires to file and make part of his petition by adding the words containing "3,840 acres, according to the official plat or survey in the State land office; that he reiterates the allegations of the original petition — makes part of said petition the patent 4,058, mark- A." Wherefore petitioner prays that this supplemental and amended petition be filed, and that the original petition be amended by adding the words 3,840 acres, according to the official plat of survey in the State land office, after the words "land district," in the description of the land herein, on page 1, line 14, of the original petition herein filed, and that defendants be cited to appear and answer this petition and the original petition filed herein, and that the writ of injunction prayed for in the original petition issue according to law, and that there be judgment as prayed for in the original petition filed, and for all costs, and for general and equitable relief, &c.

(Signed) EDWIN H. McCALEB,
Attorney for Petitioner.

Affidavit.

Edwin H. McCaleb, being duly sworn, deposes and says that he is the attorney for plaintiff herein; that said plaintiff is absent, and that all the facts and allegations in the foregoing petition contained are true, so help him God.

(Signed) EDWIN H. McCALEB.

Sworn to and subscribed before me this — day of July, 1893.

(Signed) E. BUTLER, *Clerk.*

Order.

Let this supplemental and amended petition be filed.

Parish of Plaquemines, July 8th, 1893.

(Signed) A. E. LIVAUDAIS, *Judge.*

Motion to Show Cause Why Injunction Should Not Issue Against Defendants.

Extract from the minutes of Friday, July 7th, 1893.

Pursuant to adjournment, the court met.

Present: Hon. A. E. Livaudais, judge.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

On motion of Edwin H. McCaleb, Esq., of counsel for plaintiff, it is ordered that defendants, August F. Leovy and Henry J. Leovy

and Robert S. Leovy, show cause on Saturday, July 8th, 1893, at 11 o'clock a. m., why an injunction should not issue herein as prayed for.

6 *Answer to Rule to Show Cause Why an Injunction Should Not Issue.*

Filed by counsel for defendant July 8th, 1893.

Twenty-second Judicial District Court, Parish of Plaquemines.

ROBERT M. WHITE
vs.
AUG. F. LEOVY ET ALS. } No. 76.

And now appear defendants, and in response to the rule to show cause why an injunction should not issue, and expressly reserving the right on the part of Henry J. Leovy to plead and to except to the jurisdiction of the court, and also to except and plead with other defendants to the matters set up in said petition, say that the said suit has never been properly filed or docketed in the said court; that, without waiving this plea, *that* the said suit on its face is too vague and indefinite to authorize the issuance of said writ; that the property therein said to be under and in plaintiff's possession is in no way specifically described, nor is the area, metes, or bounds of said property set forth which would authorize the injunction, so as to give notice to defendants as to all the land or lands which they are enjoined from entering on; that defendants pray that said injunction be refused and for equitable relief.

(Signed) JAMES WILKINSON, *Att'y.*
HENRY J. LEOVY,
Attorney & in Proper Person.

Writ of Injunction Taken Out by Plaintiff.

Filed July 24th, 1893.

7 Served on August F. Leovy.

STATE OF LOUISIANA, }
Parish of Plaquemines. }

22nd Judicial District Court.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

The State of Louisiana to August F. Leovy, Robert S. Leovy, and Henry J. Leovy, Greeting:

You are hereby prohibited, restrained, and enjoined from cutting or removing any willows or other property of the hereinafter-described property, to wit:

All the unsurveyed marsh west of lots fronting on the right bank

of the Mississippi river, except section No. 16, in township No. twenty-two south, range No. thirty-one east, in the southeastern west of the river land district, containing 3,840 acres, according to the official plat of survey in the State land office, according to patent No. 4058, marked "A," annexed to the accompanying petition.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this seventeenth day of July, A. D. 1893.

(Signed) LOUIS L. HUNTINGTON, *D'y Clerk.*

Sheriff'- Return on Writ of Injunction.

Received July 17th, 1893, and on the 20th of same month and year served a true copy of the within writ of injunction on August F. Leovy by leaving the same at his domicil, in the parish,
8 in the hands of Mr. Nicholas T. Gathleny, a person apparently over the age of 14 years, living and residing at said domicil, at about 40 miles below the court-house of this parish, he, the said August F. Leovy, being absent therefrom at the time of service, which facts I ascertained by interrogating the said Mr. Nicholas T. Gathleny.

Returned July 21st, 1893.

(Signed) P. E. BARRY,
D'y Sheriff.

Writ of Injunction Taken Out by Plaintiff.

Filed July 24th, 1893.

Served on Robert S. Leovy.

STATE OF LOUISIANA,
Parish of Plaquemines.

22nd Judicial District Court.

ROBERT M. WHITE.
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

The State of Louisiana to August F. Leovy, Robert S. Leovy, and Henry J. Leovy, Greeting:

You are hereby prohibited, restrained, and enjoined from cutting or removing any willows or other properties of the hereinafter-described property, to wit:

All the unsurveyed marsh west of lots fronting on the right bank of the Mississippi river, except section No. 16, in township No. twenty-two south, range No. thirty-one east, in the southeastern west of the river land district, containing 3,840 acres, ac-
9 cording to the official plat of survey in the State land office, according to patent No. 4058, marked "A" and annexed to the accompanying petition.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this seventeenth day of July, A. D. 1893.

(Signed) E. BUTLER, *Cl'k.*

Sheriff's Return on Writ of Injunction Served on Robert S. Leovy.

Filed July 21st, 1893.

Received July 17th, 1893, and on the 20th of same month and year served a true copy of the within writ of injunction on Robert S. Leovy, Esq., personally, in this parish.

Returned July 21st, 1893.

(Signed) P. E. BARRY, *D'y Sheriff.*

Writ of Injunction Taken Out by Plaintiff.

Filed July 27th, 1893.

Served on Henry J. Leovy.

STATE OF LOUISIANA,
Parish of Plaquemines.

22nd Judicial District Court.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

The State of Louisiana to August F. Leovy, Robert S. Leovy, and Henry J. Leovy, Greeting:

You are hereby prohibited, restrained, and enjoined from cutting or removing any willows or other properties of the hereinafter-
10 described property, to wit:

All the unsurveyed marsh west of lots fronting on the right bank of the Mississippi river, except section No. 16, in township No. twenty-two south, range No. thirty-one east, in this southeastern west of the river land district, containing 3,840 acres, according to the official plat of survey in the State land office, according to patent No. 4058, marked "A," annexed to the accompanying petition.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this seventeenth day of July, A. D. 1893.

(Signed) LOUIS L. HUNTINGTON, *D'y Clerk.*

Sheriff's Return.

Received Thursday, July 20th, 1893, and on the 20th day of July, 1893, I served a copy of the within writ of injunction personally on Henry J. Leovy, defendant herein.

Return- same day.

(Signed) JAMES DUGNAN,
D'y Sheriff, Parish of Orleans, La.

Bond of Injunction.

Filed July 17th, 1893, by plaintiff.

Know all men by these presents that we, Robert M. White, as principal, and P. Callahan, as surety, of the parish of Plaquemines, are held and firmly bound unto Henry J. Leovy and Robert S. Leovy in the sum of one thousand dollars, lawful money of the United States; for which payment, well and truly to be made to the said defendants, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals and dated the 15th day of July, 1893.

Whereas said Robert M. White has presented a petition to the hon. 22nd judicial district court for the parish of Plaque-
11 mines, praying for a writ of injunction to issue against defendants, now the condition of the above obligation is that we, the above-bound principals and surety, will well and truly pay to the said defendants all such damages as may be recovered against us in case it should be decided that the writ was wrongfully obtained.

(Signed) ROBERT M. WHITE.
PAT. CALLAHAN.

Answer, Affidavit, and Claim in Reconvention.

Filed July 29th, 1893.

22nd Judicial District Court, Parish of Plaquemines.

ROBERT M. WHITE
vs.
HENRY J. LEOVY ET ALS. } No. 76.

And now into this hon. court comes Henry J. Leovy, defendant herein, and reserving all rights to have the injunction herein issued annulled for insufficiency of bond or insolvency of the surety thereon, denies all and singular the allegations of plaintiff's petition except as hereafter admitted.

He avers that the lands set forth in said petition and patent as belonging to plaintiff were entered according to an official plat or survey made by G. F. Conelly in 1836, a certified copy of which from the State land office, as well as another certified copy from the U. S. surveyor general's office, with the division lines traced thereon, *and* annexed to and made part of this petition; that the 3,840 acres so entered by the said White were, according to said plat or survey, all within a distance of less than two miles of the Mississippi river and all territory to the west of that *was* at
12 the date of said survey and by the plat by which White claims to have bought West bay.

That a few years after Conelly made said survey the Jumps outlet broke through and the accreation on the seaward side of said

marsh and in said bay gradually raised the bed of said bay until the whole of said West bay became marsh lands, connecting with swamps land to westward, and at the time of said transfer to the State, in 1849 & 1850, by Congress was not a navigable bay or part of the sea.

That said White was well aware of any and all of these facts, and, endeavoring to perpetuate a fraud on the State, entered the lands originally allotted by Conelly, and under his said patent, 4058, endeavored to claim over 16,000 more acres in said township, and by malicious suits now seeks to harass, annoy, and cast a cloud on the titles of others who have entered the westward lands in said township and range honestly and according to law and who are in the undisturbed and peac-able possession of same.

That your defendant has neither directly or indirectly slandered the title of plaintiff to the 3,840 acres which he claims; that he has never tresspassed thereon or done any of the acts falsely alleged and sworn to in plaintiff's petition; and now, assuming the character of plaintiff in reconvention, defendant avers—

That your petitioner and reconvenor has entered and obtained patents for the lands described in said patents, which are annexed to and made part of these pleadings for further references; that your petitioner and reconvenor is in actual, peac-able, and undisturbed possession and enjoyment of his aforesaid lands; that wantonly, maliciously, and with a view to harass and annoy plaintiff in reconvention the said writs have slandered petitioner's title to said property; — has averred to petitioner's attorney and to others his intention of entering on said property and tresspassing
13 thereon, cutting and selling willows from there and doing other great and irreparable damage to petitioner, all under cover of the writ of injunction herein issued, which does not include or concede to him any right, usufruct, possession, or ownership to any of the property patented to and peac-ably enjoyed and possessed by petitioner; that petitioner has large quantities of willows on said land, which were and are needed by the jetty Co., and petitioner believes that he would have sold said willows to said company, but the said White, falsely and maliciously pretending that said willows were his property, and that reconvenor could not dispose of same by reason of the injunction herein issued, obtained said contract and now seeks to injure reconvenor further by taking said willows by force or fraud.

That a writ of injunction should be granted to reconvenor forthwith, to protect him from the aforesaid acts of the said Robert M. White.

That your reconvenor has been damaged by said White as follows:

For slander of his title to aforesaid property, one thousand dollars; for annoyances, vexation, loss of time occasioned by said malicious suit, and *that* the threatened trespass of Robert M. White, one thousand dollars; for damages for fraud and misrepresentation, by which your petitioner was cheated out of his contract, as

aforesaid, for said willows by said White, two thousand five hundred dollars.

For counsel's fees necessary to defend this wanton and malicious suit and to have said illegal injunction dissolved, five hundred $^{00}_{100}$ dollars. Wherefore, the premises considered, defendant prays that plaintiff's suit be dismissed at his costs.

14 That plaintiff in reconvention obtains, after due affidavit and the giving of such bond as the court may fix, an injunction forthwith, restraining the said Robert M. White from entering, trespassing upon, cutting willows on, or in any manner doing any other harm or injury to reconvenor in the peac-able enjoyment of the lands described in his aforesaid patents; that after due and legal proceeding had that the said Robert M. White be condemned to pay petitioner the sum of five thousand dollars as damages, with interest from judicial demand; that said injunction be maintained, and for costs and for equitable relief.

(Signed) JAMES WILKINSON, *Att'y.*

Henry J. Leovy, being duly sworn, deposes and says that the allegations of the foregoing petition are true and correct, so help him God.

(Signed) HENRY J. LEOVY.

Sworn to and subscribed to before me this 26th day of July, A. D. 1893.

(Signed) ROBERT P. UPTON,
Notary Public.

Order.

Let a writ of injunction issue as prayed for herein upon plaintiff in reconvention furnishing bond in the sum of one thousand dollars, conditioned as the law requires.

Parish of Plaquemines, July 29th, 1893.

(Signed) A. E. LIVAUDAIS, *Judge.*

15 *Answer of Augustus F. Leovy and Robert S. Leovy, Defendants.*

Filed Dec. 11th, 1893.

22nd Judicial District Court, Parish of Plaquemines, State of Louisiana.

ROBERT M. WHITE
vs.
HENRY J. LEOVY ET ALS. } No. 76.

And now into court come Augustus F. Leovy and Robert S. Leovy, made defendants herein, and for answer to plaintiff's petition deny all and singular the allegation- therein contained.

Further answering, they specially deny that they have ever slandered plaintiff's title to the property, which he claims, or trespassed attempted or intended to trespass thereon.

And now said Augustus F. Leovy and R. S. Leovy, assuming the position of plaintiffs in reconvention, aver that plaintiff's suit and the injunction herein sued out by him against them are malicious and vexatious on the part of said plaintiff, R. M. White, and have subjected them to annoyance, injury, and damage as follows: For damage suffered by them through vexation and annoyance caused by said injunction suit and injunction illegally sued out herein against them, one thousand dollars; for counsel fees to defend the said malicious suit and to dissolve said injunction, five hundred dollars; for loss of time and travelling expenses in defending said suit, one thousand dollars; which said amounts, in all two thousand five hundred dollars, are due and owing and unpaid by said R. M. White to reconvenors.

Wherefore said defendants pray for judgment in their favor dismissing plaintiff's suit with costs and for general relief, and that said injunction issued herein against defendants be dissolved;
16 and, as plaintiffs in reconvention, they pray for judgment in their favor against said Robert M. White, defendant in reconvention, in the sum of two thousand five hundred dollars, with legal interest from judicial demand and for costs, and for such other and further relief as they may in law and justice be entitled to, and all general relief.

(Signed) JAMES WILKINSON,
HENRY J. LEOVY,
Attorneys for Defendants and Reconvenors.

Writ of Injunction.

Filed the 9th day of August, 1893, against plaintiff.

STATE OF LOUISIANA, }
Parish of Plaquemines. }

22nd Judicial District Court.

ROBERT M. WHITE }
vs.
HENRY J. LEOVY ET ALS. }

The State of Louisiana to Robert M. White, Greeting:

You are hereby prohibited, restrained, and enjoined from entering upon, trespassing upon, cutting willows on, or in any manner doing any other harm or injury to the hereinafter-described property, to wit:

1. The east half of section No. nine, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of river land district, containing three hundred and twenty $\frac{00}{100}$ acres
according to the official plat of the survey of said lands in
17 the State land office.

2. The southwest quarter of section No. ten, in township No. twenty-two south, of range No. thirty-one east, in the south-

eastern west of the river land district, containing one hundred and sixty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

3. The west half of section No. fifteen, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of river land district, containing three hundred and twenty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

4. The east half of northwest quarter, west half of northeast quarter, and west half of southeast quarter of section No. twenty-two, in township twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing two hundred and twenty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

5. The east half of section No. twenty-seven, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

6. The northeast quarter of section No. thirty-four, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing one hundred and sixty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

7. All of section (4) four and *of all* section No. (5) five, in township No. twenty-two (22) south, range No. (31) thirty-one
18 east, in the southeastern west of river land district, containing twelve hundred and eighty acres according to the official plat of the survey of said lands in the State land office.

8. The whole of section No. six, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing six hundred and forty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

9. The west half of section No. nine, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

10. The east half of section No. eight, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

11. The east half of section No. seventeen, in township twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

12. The east half of section No. twenty, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of

the river land district, containing three hundred and twenty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

13. The east half of section N-. twenty-nine, in township
19 No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty & $\frac{00}{100}$ acres according to the official plat of the survey of said lands in the State land office.

(Signed) ——— ———.

Witness the Hon. A. E. Livaudais, judge of the court aforesaid, this fourth day of August, A. D. 1893.

(Signed) E. BUTLER, *Clerk.*

Sheriff's Return.

Received August 5th, 1893, and on the 7th day of the same month and year served a true and certified copy of the within writ of injunction on Robert M. White in this parish by leaving the same in the hands of Mrs. Marie Denesse, wife of Thomas Denesse, a person apparently over the age of 14 years, residing at the domicil of the said Robert M. White, he being absent at the time of said service, which facts I ascertained by interrogating the said Mrs. Marie Denesse.

Return-, parish of Plaquemines, August 9th, 1893.

(Signed) JOHN C. DE ARMAS, *D'y Sheriff.*

Bond of Injunction.

Filed August 4th, 1893, by defendants.

Know all men by these presents that we, Henry J. Leovy, as principal, and James Wilkinson and Augustus F. Leovy,
20 W. S. Reddick, as sureties, *in solido*, are all and each of them bound *in solido* to Robert M. White in the full sum of one thousand dollars; for the payment of which we bind ourselves, heirs, executors, and assigns, firmly by these presents.

Whereas Henry J. Leovy has this day, as reconvenor in the suit of Robert M. White *vs.* H. J. Leovy *et als.*, No. 76 of the docket of the 22nd judicial district court, parish of Plaquemines, sued out a certain writ of injunction prohibiting the said White from trespassing on, cutting willows on, or doing any other damage to reconvenor on the lands now owned and possessed by reconvenor and described in aforesaid writ of injunction:

Now the condition is that the said obligors *in solido* will well and truly pay to defendant and all parties in interest all damages they may sustain in case said suit be wrongfully sued out; otherwise to be null and void.

Signed with our seals and dated this 2nd day of August, 1893.
(Signed) HENRY J. LEOVY, *Principal.*
JAMES WILKINSON,
Surety in Solido.
AUGUST F. LEOVY,
Surety in Solido.
W. S. REDDICK,
Surety in Solido.

Fixing Case for Trial.

Extract from the Minutes of Monday, April 9th, 1894.

Pursuant to adjournment, the court met.
Present: Hon. A. E. Livaudais, judge.

21 ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

On motion of James Wilkinson, Esq., of counsel for defendants, it is ordered that this case be fixed for trial on Wednesday, the 25 inst., at 10 o'clock a. m.

Case Continued.

Extract from the Minutes of Tuesday, December 4th, 1894.

Pursuant to adjournment, the court met.
Present: Hon. A. E. Livaudais, judge.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

By consent of counsel, this case was ordered continued until the next term of court.

Continuance.

Extract from the Minutes of Monday, December 2nd, 1895.

Pursuant to adjournment, the court met.
Present: Hon. A. E. Livaudais, judge.

R. M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

On motion of James Wilkinson, Esq., of counsel for plaintiff, it is ordered that this case be continued indefinitely.

Case Continued.

Extract from the Minutes of Monday, July 6th, 1896.

22 Pursuant to adjournment, the court met.
Present: Hon. Robert Hingle, judge.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

On motion of James Wilkinson, Esq., of counsel for plaintiff herein, and on suggesting to the court that A. E. Livaudais, Esq., att'y-at-law, has been employed as associate counsel in this case, it is ordered that this cause be continued until the next term of court.

Continuance.

Extract from the Minutes of Monday, Oct. 5th, 1896.

Pursuant to adjournment, the court met.
Present: Hon. Robert Hingle, judge.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

By consent of counsel this case was ordered continued until the next term of court, and that the name of John Dymond, Jr., att'y-at-law, be entered as counsel for defendants.

Fixing Case for Trial.

Extract from the Minutes of Monday, December 7th, 1896.

Pursuant to adjournment, the court met.
Present: Hon. Robert Hingle, judge.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

23 On motion of James Wilkinson, Esq., of counsel for defendants herein, it is ordered that this case be fixed for trial for Tuesday, the 22nd inst., at 10 o'clock a. m.

Trial.

Extract from the Minutes of Tuesday, December 22nd, 1896.

Pursuant to adjournment, the court met.
Present: Hon. Robert Hingle, judge.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

This case came up this day, regularly fixed for trial.
Present: E. H. McCaleb and E. H. McCaleb, Jr., Esqs., of counsel for plaintiff; Henry J. Leovy, James Wilkinson, and A. E. Livaudais, Esqs., of counsel for defendants.
When, after hearing a portion of the evidence adduced on the trial of this cause, this case was ordered continued until tomorrow, the 23rd inst., at 10 o'clock a. m.

Exception and Motion to Strike Out and Order.

Filed Dec. 22nd, 1896.

22nd Judicial District Court, Parish of Plaquemines.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

Now into this honorable court comes Robert M. White, plaintiff in the above entitled and numbered cause, by his undersigned counsel, and for exception and demurrer to the answer and plea in reconvention herein filed by defendant says:

1st. That the official plat or survey of G. F. Conelly, United States surveyor, made in 1836, under the authority of the United States Government, by and in accordance with which plat and survey the lands owned by the plaintiff and described in the patent annexed to the supplemental petition filed in this cause were patented and granted to the State of Louisiana by the United States Government, and subsequently sold and patented by the State of Louisiana to the said Robert M. White, plaintiff, cannot be questioned or impeached by defendant in this suit, and this court is wholly without jurisdiction, *ratione materiæ*, to enquire and determine whether said official plat or survey is erroneous.

2nd. That the patent issued to the said Robert M. White, plaintiff, cannot be questioned or impeached by defendant or by any private individual for fraud, but only at the suit of the State of Louisiana.

3rd. That the United States Government, as the owner of the sea marsh mentioned and referred to in the survey, plat, field-notes, and description of G. F. Conelly, U. S. surveyor, made in 1836, adjacent to the sea shore, known as West bay, and as sovereign acquired all

24

the alluvion made by accretion to said lands between the years 1836 and 1850, and when said lands were granted by the United States Government to the State, the State of Louisiana, as grantee of the United States, and the said plaintiff, R. M. White, as patentee of the State of Louisiana, acquired all of said lands, as well as the accretions which were added thereto, as they were at the time they were granted by the United States to the State of Louisiana.

4th. That the grant made under the acts of Congress approved March 2, 1849, and September 28, 1850, known as the "swamp-land acts," passed the title of the United States to all the sea
25 marsh west of lots fronting on the right bank of the Mississippi river in township 22 south, range No. 31 east, in the southeastern west of river land district, according to the official survey of lands, not only as it was at the time of the said survey by G. F. Conelly in 1836, but as it was at the date of said grants in 1849 and 1850, so that the United States did not retain any interest in any accretions formed between the survey in 1836 and the date of the grant to the State of Louisiana, and the said R. M. White, plaintiff herein, acquired all of said land in township No. 22 south, range No. 31 east, in the southeastern west of river land district, according to the official survey of said lands in the State land office as they were at the time they were granted by the United States Government to the State of Louisiana, as aforesaid.

5th. That the patent issued by the State of Louisiana to the said R. M. White, plaintiff herein, No. 4058, of all the marsh west of lots fronting on the right bank of the Mississippi, in township No. 22 south, range No. 31 east, in the southeastern west of river land district, according to the official survey of said lands in the State land office, evidences a contract between the State of Louisiana and the said R. M. White, plaintiff herein, and the State of Louisiana could not subsequently lawfully grant unto the defendant Henry J. Leovy or others any part or portion of the lands in said township, and by so doing, as defendant pretends, has attempted to impair the obligations of the contract between the State of Louisiana and the said Robert M. White, plaintiff herein, and deprive him of his property without due process of law, in violation of the Constitution and laws of the United States.

6th. That the patents of the lands issued to the defendant Henry J. Leovy, referred to in the answer and plea in reconvention
26 herein filed by him, were made, issued, and delivered subsequent to the said patent No. 4058, issued to R. M. White, plaintiff herein, and are embraced in and covered by the patent previously issued to the plaintiff.

Therefore the said patents so subsequently issued to the defendant by the State of Louisiana are illegal, null, and void, being for land embraced within the patent of plaintiff, and the State of Louisiana in issuing said patents to the defendant Henry J. Leovy sought to impair the obligation of the contract entered into by her with the said R. M. White, plaintiff herein, and sought to deprive him of his property without due process of law, in violation of the Constitution and laws of the United States.

7th. That all the acts and doings of the State of Louisiana and of defendants Henry J. Leovy stated and set forth in defendants' answer and plea in reconvention filed in this cause and hereinabove recited are contrary to and violative of the Constitution and laws of the United States.

Wherefore plaintiff and appearer prays that exception be filed, and he moves the court to strike out all that portion of defendants' answer and plea in reconvention alleging errors in the official plat and survey made by G. F. Conelly in 1836 or any change in the nature and character of the marsh west of lots fronting on the right bank of the Mississippi in township 22 south, range No. 31 east, in the southeastern west of river land district, according to the official survey of said lands in the State land office, by accretion or otherwise, and also all averments of fraud contained in said answer and plea in reconvention, and also all averments of defendant- setting up title to any of said lands under patents subsequent in date
27 to that of the patent held by R. M. White, plaintiff, and that all evidence in support of said averments be excluded, rejected, and disallowed for the reasons above cited.

And he prays that this exception be sustained, and for general relief.

(Signed) E. HOWARD McCALEB,
E. H. McCALEB, Jr.,
Attorneys for R. M. White, Plaintiff.

Order.

Let the foregoing exception and motion to strike out be filed as prayed for and according to law.

(Signed) ROBERT HINGLE, *Judge.*

Point a la Hache, La., December 22nd, A. D. 1896.

Ruling on Exception and Demurrer by Plaintiff to Answer of Defendants and on Motion to Strike Out.

Filed December 23rd, 1896.

In the year 1890 plaintiff acquired by purchase from the State certain lands situated in this parish and described in the patent from the State as all unsurveyed marsh land west of lots fronting on the right bank of the Mississippi, except section 16, in township 22, containing 3,840 acres according to the official plat of survey. The official survey was made in 1836 and these lands were donated to the State of Louisiana by the United States Government in 1849 or 1850. Plaintiff claims under his patent the whole of township 22 except the sixteenth section and front lots on
28 the Mississippi in said township.

Defendants set up in their answer title to several sections included in this township claimed by plaintiff, and this converts the action into a petitary action.

Therefore defendants must—

1st. Make out their case clearly. 32 A., 613.

2nd. They must succeed or fall on the strength of their own title and not on the weakness of their adversary's. 33 A., 249.

3rd. Defendants must show that they have a better and superior title than plaintiff to the sections in the township claimed by the plaintiff.

4th. The court cannot determine whether an official survey is erroneous. It becomes a part of the grant by which lands are conveyed.

5th. I am of the opinion that patents for land can only be impeached for fraud at the suit of the Government.

Now, the question as to whether or not when plaintiff obtained his patent to this land there was more than the number of acres mentioned therein and the question of accretion are questions to be decided on the merits of the case; so is also the question that whether possession of part of a tract of land with a title to the whole, if any, is possession of the whole.

In the argument of counsel on this motion, which assumed a wider range than was expected, many points appertaining directly to the merits of the case were unnecessarily discussed, but which the court cannot at this stage of the proceedings pass upon. The court therefore rules, for the reasons above cited:

1st. That that portion of defendant's answer and plea of reconvention alleging error in the official plat and survey made by
29 G. F. Conelly in 1836, or any change in the patent and character of the marsh west of lots fronting on the right bank of the Mississippi in township 22 south, range No. 31 east, in the southeastern west of the river land district, according to the official survey of land in the State land office, and also all averments of fraud contained in said answer and plea of reconvention be stricken out, and that all evidence in support of said averments be excluded and disallowed.

2nd. That the defendants be allowed to show by proper evidence that they have a better and superior title than plaintiff to the sections in the township claimed by plaintiff.

Trial Resumed.

From December 23rd, 1896.

WEDNESDAY, *December 23rd*, 1897.

Extract from the Minutes.

Pursuant to adjournment, the court met.
Present: Hon. Robert Hingle, judge.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

This case came on before the court for trial, having been continued from yesterday—present, E. H. McCaleb, Sr., and E. H. McCaleb, Jr., Esqs., of counsel for plaintiff; Henry J. Leovy, James

Wilkinson, and A. E. Livaudais, Esqs., of counsel for defendants—when, after hearing the evidence, the following agreement was entered into between counsel:

It is agreed that this case shall be submitted to the court upon the pleadings and evidence on file, reserving to both parties
30 the right to file briefs by or before the 15th day of January, 1896, after which date the judge be, and he is hereby, authorized by agreement of counsel to render and sign whatever judgment may be rendered in the case out of term time and in vacation, both parties reserving the right to apply for a new trial within three days provided by law, either or both parties being permitted to appeal from whatever judgment may be rendered within (10), ten days after notice of judgment thereof shall have been served upon the parties or their counsel.

Contract between Robert M. White and John A. Ubsdell, Agent of the Estate of James B. Eads.

Filed December 23rd, 1896, by plaintiffs.

NEW ORLEANS, *Sept. 29th*, 1893.

Inasmuch as R. M. White has failed to comply with the terms and conditions of his contract with John A. Ubsdell for the delivery of 8,000 cords of willows, and as under the terms of said contract of date August 1st, 1893, he was prohibited from cutting willows from Williams and Main pass:

Now, therefore, it is hereby agreed and understood that the above-mentioned contract be abrogated and annulled, and the said John A. Ubswell, as the agent of the estate of James B. Eads, and the said R. M. White, acting in his own behalf, agree and bind themselves as follows:

R. M. White agrees to cut and load upon barges from lands in the Jump and vicinity willows to an amount not to exceed five thousand (5,000) cords for eighty-five cents per cord; said willows not to exceed three inches (3″) at the butt, and to be loaded
31 on barges butt and butt and said loads to be not less than twelve feet (12 ft.) in height. Any willows cut outside of the Jump and for which John A. Ubsdell does not pay for the privilege of cutting, R. M. White is to receive one dollar and ten cents ($1.10) per cord.

John A. Ubsdell agrees to furnish the barges and to take the willows as fast as they may be required, and to pay for the same every two (2) weeks.

The word vicinity, used in this contract in connection with the locality from which willows are to be cut, is intended to refer only to lands lying on the river or in the passes below the Jump.

(Signed) JOHN A. UBSDELL.
p. p. GEO. M. McLELLAN.
ROBERT M. WHITE.

Witness: J. G. BAKER.

Certificate of John S. Lanier, Register State Land Office. Offered by Counsel for Defendants, Marked Exhibit A.

Filed Dec. 23rd, 1896.

R. M. White, Nov. 10, 1890, 225–1 N. S. L. All the unsurveyed marsh lying west of lots fronting on the right bank of Mississippi river, except 1,622, S. 31, E. 30, 4,000; 38,000, 4,058, 27, 32, S. E. W. of R.

I, John S. Lanier, register of the State land office, do hereby certify that the above and foregoing is a true copy from the tract book now on file in this office.

Witness my official signature and seal of office, at Baton Rouge, Louisiana, this 17th day of December, A. D. 1896.

(Signed) JOHN S. LANIER, *Register.*

32 *Certificate from F. C. Mevers, Sheriff of the Parish of Plaquemines, in Regard to Taxes of Henry J. Leovy, Affixed by Counsel for Defendants.*

Filed Dec. 23rd, 1896.

SHERIFF'S OFFICE, POINT A LA HACHE,
PARISH OF PLAQUEMINES, *December 23rd*, 1896.

Extracts from assessment-rolls for the years 1893, 1894, 1895, and 1896, deposit- in this office.

Year, 1893; Henry J. Leovy; ward, 5th; No. of acres, 1280; sections 4 and 5, township 22 S., R. 31 east, in south E. W. of river; assessed for $325.00; State tax, $1.95; parish tax, $3.25, and paid. Again, 640 acres, all of section 6, in township 22 S., R. 31 E. in S. E. W. of river; assessed for $160.00; parish tax, $1.60; State tax, 96 cents, and paid. Henry J. Leovy, lot five, E. half of section 8, township 22 S., range 31 east, in S. E. W. of river, and assessed for $80.00; parish tax, eighty cents; State tax, 48 cents, and paid; and ten other sections in the same township and range, valued at eighty dollars each and assessed in same name and all taxes on same paid.

The same 13 sections are assessed in the same name of Henry J. Leovy and the taxes on same are paid for the year 1894.

The same 13 sections are assessed in the name of Henry J. Leovy and the taxes on same are paid for the year 1895, and that the same appears on the assessment-rolls of 1896.

I, the undersigned, sheriff and *ex officio* tax collector, do hereby certify that the above and foregoing is a true and correct extract from the assessment-rolls deposited in my office.

(Signed) FRANK C. MEVERS,
Sheriff and ex Officio Tax Coll.

33 *Agreement between Counsel.*

Filed January 13th, 1897.

NEW ORLEANS, *January 11th*, 1897.

Hon. Judge Hingle, Point a la Hache, Plaquemines parish, La.

DEAR SIR: In the case of White *vs.* Leovy, No. 76 of the docket of your court, it is agreed by counsel, owing to the fact that Mr. J. Leovy has been too unwell to give the proper attention to the matter, that the time for filing briefs be extended to the end of January 25th, 1897.

Very truly yours.

(Signed) E. HOWARD McCALEB,
EDWIN H. McCALEB,
Att'ys — Rob't M. White, Pl't'ff.
A. E. LIVAUDAIS,
HENRY J. LEOVY,
Att'ys for Defendants.

Receipt by John S. Lanier, Register State Land Office, to Robert M. White.

Filed December 23rd, 1896, by plaintiff, marked Exhibit H.

BATON ROUGE, *August 27th*, 1890.

Received of R. M. White, Esq., the sum of $534.00 for the entry of all the unsurveyed sea marsh in T. 22 S., R. 31 E., southeastern district west of the Mississippi river; this matter to be submitted to the attorney general of the State and if, in his opinion, said land can be entered, then patent is to issue to him; otherwise the
34 money is to be refunded to him.

(Signed) JOHN S. LANIER, *Register.*

Letter by John S. Lanier, Register State Land Office, to Henry J. Leovy.

Filed December 23rd, 1896.

BATON ROUGE, *June 18th*, 1896.

Henry J. Leovy, Esq., New Orleans, La.

DEAR SIR: In reply to your letter of the 6th inst., I beg to advise you that the recent entries of Mr. R. M. White are as follows, viz: In T. 23 S., R. 31 E., S. E. W. of river, all of fractional section 13½ in rear of that part entered by Thos. Bullen. In T. 22 S., R. 31 E., S. E. W. of river, the E. ½ of N. E. ¼ of sec. 19, and in T. 22 S., R. 19 E., S. E. E. of river, all of fractional sections 12 & 13.

Very resp'y, &c.,

(Signed) JOHN S. LANIER, *Register,*
Per SEAMAN, *Clerk.*

EXHIBIT E.

Certificate from Sheriff.

Filed December 23rd, 1896, by plaintiff.

SHERIFF'S OFFICE,
PLAQUEMINES PARISH, *December 23rd*, 1896.

I hereby certify that the following is a true and correct abstract from the assessment rolls of the parish of Plaquemines for the
35 years hereinafter indicated, in the name of Robert M. White, year 1890:

Ward 5; No. of acres, 1,320; lands back of lots in T. 21 S., R. 30 & 31 E., E. W. of river; assessed, $200; State tax, $120; p'sh tax, $200; dist. levee, $200. Paid. Robert M. White, ward 5; No. of acres, 4,696.38; lands in Jump; cash value, $2,500; parish tax, $25.00; State, $15.00; dist. levee, $25.00. Paid.

Year 1891; Robert M. White, ward 5; No. of acres, 4,696.38; lands in Jump; cash value, $2,500; p'sh tax, $25.00; State tax, $15.00; dist. levee, $25.00. Paid.

Year 1894; Robert M. White, ward 5; No. of acres, 848; sec. 16, T. 22 S., R. 31 E., E. S. E. W. of river; cash value, $300; p'sh tax, $3.00; State, $1.80; dist. levee, $3.00. Paid.

Year 1895; Rob't M. White, ward 5; unsurveyed sea marsh, T. 22 S., R. 31 E. S. E.; value of lands, $300.00; p'sh tax, $3.00; State tax, $1.80; D. levee, $3.00. Paid.

Year 1896; Rob't M. White, ward 5; all unsurveyed sea marsh, T. 22 S., R. 31 E., S. E. W. of river; value, $200.00; State tax, $1.20; p'sh tax, $2.00; dist. levee, $2.00. Due.

(Signed) FRANK C. MEVERS,
Sheriff & ex Officio Tax Coll.

Sworn to and subscribed before me this 23rd day of December, 1896.

(Signed) LOUIS L. HUNTINGTON, *D'y Clerk.*

Agreement between Counsel.

Filed January 23rd, 1897.

36 22nd Judicial District Court, Parish of Plaquemines.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

It is agreed, in case of appeal, that the maps, plans, plats, and diagrams filed with the pleadings, offered in evidence, or annexed or referred to in any bill of exceptions shall go up in the original

to the appellate court without being copied in the transcript of appeal.

(Signed) E. H. McCALEB &
" EDWIN H. McCALEB,
For Plaintiff.
" HENRY J. LEOVY,
For Defendants.

Judgment.

Filed March 24th, 1897.

Twenty-second Judicial Dist. Court, Parish of Plaquemines, State of Louisiana.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 76.

Judgment.

Plaintiff alleges that he is the owner and in lawful possession of the following-described real estate, to wit:

"All the unsurveyed sea marsh west of lots fronting on the right bank of the Mississippi river, except section No. 16, in township twenty-two south, range No. thirty-one east, in the southeastern west of river land district, containing 3,840 acres according to the official plat of the survey in the State land office."

That he acquired said property by purchase from the State
37 of Louisiana and by virtue of patent No. 4058, issued according to law, and that said property is worth the sum of $2,500. Petitioner avers that Robert S. Leovy and August F. Leovy, residing in the parish of Plaquemines, and Henry J. Leovy, who resides in the parish of Orleans, have illegally conspired and combined together for the purpose of harassing him in the enjoyment of his said property, and that, combining together for the purpose, they have wilfully and maliciously slandered his title to said land and have publicly and privately stated and announced that petitioner had no title to the same, and he specially avers that they have disturbed and will disturb him in the enjoyment, ownership, and possession of said land.

Petitioner alleges that on account of said illegal acts, slander of his title, and disturbance he has suffered damages in the sum of two thousand dollars, and if defendants are not prevented from slandering petitioner's title and disturbing him in the exercise and enjoyment of his rights thereto, and from removing, taking, and cutting willows or other property therefrom, which petitioner believes they will do, he will suffer great damage and irreparable injury, and that a writ of injunction is required and necessary to preserve and protect his rights in the premises.

Plaintiff prays that defendants be cited to appear; that a writ of injunction issue to defendants prohibiting and restraining them

from entering on any part of the lands above described, and from denying petitioner's title to the same, and from taking, cutting, or removing any willows or other property on or from said lands, or from attempting to do so, and that the defendants be prohibited and restrained from disturbing him in the enjoyment, possession, and ownership of said property, and that, after due proceed-
38 ings had, said injunction be perpetuated and he do have and recover judgment against them *in solido* as damages in the sum of $2,000; that they be declared to have slandered his title to the above-described property, and that he be maintained and quieted in his possession.

Plaintiff's petition was filed on July 7th, 1893. A rule *nisi* was issued on the same day. On July 8th plaintiff filed a supplemental petition, alleging that he desires to make part of his petition by adding the words "containing 3,840 acres, according to the official plat of survey in the State land office," and he prayed for judgment as in the original petition. The court ordered a writ of injunction to issue as prayed for on plaintiff furnishing bond in the sum of $1,000. The bond was furnished and the injunction issued.

Henry J. Leovy filed an answer, reserving all rights to have the injunction herein issued annulled, and denying all and singular the allegations of plaintiff's petition except as hereinafter admitted.

He avers that the lands set forth in said petition and patent as belonging to plaintiff were entered according to an official plat or survey made by G. F. Conelly in 1836, a certified copy of which from the State land office, as well as another certified copy from the United States surveyor general's office, with the division lines traced thereon, are annexed to and made part of his answer; that the 3,840 acres so entered by the said White were, according to said plan or survey, all within a distance of less than two miles of the Mississippi river, and all territory to the west of that was at the date of said survey and by the plat by which White claims to have
39 bought "West bay;" that a few years after Conelly made said survey the jump outlet broke through and the accretion on the seaward side of said marsh and in said bay gradually raised the bed of said bay until the whole of said West bay became marsh land, connecting with swamp lands to the westward, and at the time of said transfer to the State in 1849 & 1850 by Congress was not a navigable bay or post of the sea.

That said White was well aware of any and all these facts, and, endeavoring to perpetuate a fraud on the State, entered the lands originally patented by Conelly, and under his said patent 4058 endeavored to claim over 16,000 more acres in said township, and by malicious suits now seeks to harass, annoy, and cast a cloud on the title of others who have entered the westward lands in said township and range honestly and in accordance with law, and who are in the undisturbed possession of same; that defendant has neither directly or indirectly slandered the title of plaintiff to the 3,840 acres which he claims; that he has never trespassed thereon or done any of the acts falsely alleged and sworn to in plaintiff's petition; and now, assuming the character of plaintiff in recon-

vention, defendant avers that your petitioner and reconvenor has entered and obtained patents for the lands described in said patents which are annexed to and made a part of these pleadings for further reference; that your petitioner and reconvenor is in actual, peaceful, and undisturbed possession and enjoyment of his aforesaid lands; that wantonly, maliciously, and with a view to harass and annoy plaintiff in reconvention the said White has slandered petitioner's title to said lands, has averred to petitioner's attorney and to others his intention of entering on said property and his passing thereon, cutting and selling willows from same, and
40 doing other great and irreparable damage to petitioner, all under the cover of the writ of injunction herein issued, which does not include or concede to him any right, usufruct, possession, or ownership to any of the property patented to and peaceably enjoyed and possessed by petitioner.

That petitioner has large quantities of willows on said — which were and are needed by the jetty Co., and petitioner believes that he would have sold said willows to said company, but the said White, falsely and maliciously pretending that said willows were his property and that reconvenor could not dispose of same by reason of the injunction herein issued, obtained said contract and now seeks to injure reconvenor further by taking said willows by force or fraud; that a writ of injunction should be granted to reconvenor forthwith to protect him from the aforesaid acts of the said Robert M. White; that your reconvenor has been damaged by said White as follows:

For slander of his title to aforesaid property, $1,000; for annoyance, vexation, loss of time occasioned by said malicious suit and threatened trespass of said Robert M. White, $1,000.

For damages, for fraud and misrepresentation by which your petitioner was cheated out of his contract, as aforesaid, for said willows by said White, $2,000.

For counsel fees necessary to defend this wanton and malicious suit and to have said illegal injunction dissolved, $500.

He prays that plaintiff's suit be dismissed with costs; that plaintiff in reconvention obtains after due affidavit and the giving of such bond as the court may fix an injunction forthwith, restraining the said Robert M. White from entering upon, trespassing upon, cutting willows on, or in any was doing any other harm or injury to reconvenor in the peaceful enjoyment of the lands de-
41 scribed in his aforesaid patents; that after due and legal proceedings had that the said Robert M. White be condemned to pay petitioner the sum of five thousand dollars as damages, with interest, and that said injunction be maintained.

The court issued the injunction as prayed for.

August F. Leovy and Robert S. Leovy, made defendants herein, filed an answer denying all and singular the allegations contained in plaintiff's petition. Further answering, they specially deny that they have ever slandered plaintiff's title to the property which he claims, or trespassed or attempted to trespass thereon; and assuming the position of plaintiffs in reconvention, they aver that plain-

tiff's suit and the injunction herein sued out are malicious and vexatious, have subject- them to annoyance, injury, and damages as follows:

For damages suffered by them through vexation and annoyance caused by said injunction illegally sued out, $1,000.

For counsel fees, $500.

For loss of time and travelling expenses, $1,000; the whole amounting to $2,500.

They pray that the injunction issued herein be dissolved and for judgment in their favor against White in the sum of $2,500.

The facts in controversy are these, namely:

In the year 1890 Robert M. White, plaintiff herein, obtained from the State of Louisiana, through the register of the land office, a patent to certain lands situated in this parish, which contains, among others, the following recitals:

A. Whereas R. M. White purchased per certificate No. 2251, N. S. L., Nov. 10th, 1890, *all the unsurveyed marsh* west of lots
42 fronting on the right bank of the Mississippi, except section sixteen, in township twenty-two south, range No. thirty-one east, in the southeastern, west of river land district, containing 3,840 acres, according to the official plat of the survey of said lands in the State land office.

B. Accompanying this patent is a certified copy of the approved map on file of the survey made by G. F. Conelly, U. S. surveyor, in 1836 of front lots located on the right bank of the Mississippi in said township, showing also their area and the two corners of T. 22 S., R. 31 E.

C. Conelly's field-notes.

A. The receipt signed by John S. Lanier, register of the land office, showing that White paid five hundred and thirty-four dollars for the entry of *all the unsurveyed sea marsh* in township 22 S., R. 31 E., southeastern district west of the Mississippi river.

This receipt is dated August 27th, 1890, and the question was then submitted to the attorney general for his opinion. As the patent to these lands was issued to White in November, 1890, I must conclude that the att'y general concurred in its issuance in accordance with act 75 of 1880, sec. 9.

1.

The lands in controversy were acquired by the State of Louisiana from the U. S. Government by act of Congress approved Sept. 28th, 1850. The only official survey made of this township was that of G. F. Conelly, in the year 1836, but his field-notes show very plainly that his survey extended only to the front lots and not to the sea marsh. His map also discloses this fact, which is fully explained by Mr. Bradford, a surveyor, who, on page 10, testifies as follows:

"The map shows the two corners of township 22; in fact,
43 the length of the township and *the area of the front lots.*"

And again, on page 14, he says:

"The sections described by Conelly in his field-notes and meas-

urements refer to lots fronting on the river," and he adds: "The sectional lines were not run, only the range lines between ranges 31 and 32 east, and portions of the southern as well as the northern bound-ry of the township."

It will therefore be noted that the sea marsh in township 22 S., R. 31 E., has never been surveyed, nor have the sectional lines been run by any surveyor legally authorized to make such survey. The official plat merely locates the township, shows its two corners, and the area of the frone lots.

Defendant Henry J. Leovy claims the ownership of certain sections and fractional sections of land included within the said township by virtue of patents issued by the State of Louisiana three years subsequent in date to White's patent. Mr. Robert S. Leovy testifies that he and Mr. August F. Leovy have denied White's title to the land in controversy. If this case was analogous to that of The State *vs.* Buck, 46 A., 658, this court could not decide the issues presented herein in favor of plaintiff without utterly ignoring the authority of the supreme court, but I am firmly of the opinion that this case is entirely dissimilar from the Buck case, for these reasons: A. In that case a careful examination of the patent will show that two boundaries were given, viz: (1.) "All the unsurveyed sea marsh * * * west of the Mississippi river, excepting front lots * * * extending to West bay."

The actual boundaries were the front lots surveyed by Conelly on the east and West bay on the west, and the patent issued to Buck conveyed to him all the unsurveyed sea marsh included between these limits. In the present case no such boundary as West bay is given or stated in the patent, but only the eastern boundary, the front lots.

44

White's patent calls for *all the unsurveyed sea marsh* in township 22 S., R. 31 E., not, as in the Buck case, extending as far as West bay, but absolutely *all* except section 16.

B. In the Buck case the State was a party plaintiff, here, a private individual and not the sover-ign is the plaintiff.

C. Buck claimed that his sale was one *per aversionem*, but the pleadings in this case show that White claims a determinate object, namely, all the unsurveyed marsh land in said township except section 16th. For the reasons above stated, I am of the opinion that the two cases are entirely dissimilar.

2.

Much stress is laid by defendants' counsel on the phrase "according to the official plat of the survey of said land in the State land office. In fact, defendant Leovy bases his claim to his title to the land claimed by White and patented to him almost entirely on his construction of this clause, which construction I believe is erroneous, and on the map which accompanies the patent. Now, it is an irrefutable fact that the land patented to White was never surveyed. There can be no official plat of the survey of unsurveyed land, and Conelly's field-notes evidence the fact that the sea marsh comprised in this township was never surveyed.

How could White acquire "all the unsurveyed sea marsh * * * containing 3,840 acres * * * according to the official plat of the survey of this unsurveyed sea marsh?

These words are to me absolutely meaningless if they apply
45 to the unsurveyed land in this township; hence, I do not see how the official plat can have any application or reference to the unsurveyed sea marsh; it establishes, as Bradford states, the *locus in quo* of the township and shows the area of the front lots.

3.

The phrase "containing 3,840 acres" in White's patent is merely an estimate, because there has been no authorized survey made of this marsh land since 1836.

While defendant Leovy alleges that there are some 20,000 acres of land in this township, he has failed to prove this. The evidence does not satisfy me that White acquired a greater quantity of land than his patent calls for. Almost the whole of township 22 S. *E.*, R. 31 E., is cut up by *en*-umerable bayous, passes, and a few navigable streams. The State could not sell land covered by beds of streams. White testifies, page 10: "It is a partial township; has 12 or 15 thousand acres in area, nine-tenths being water." His testimony stands uncontradicted. But if White has acquired more land than he paid for, the State, yes, even the sovereign, un- due form of government could not deprive *of* him of that excess without due process of law. Whoever by virtue of a public position under a State government deprive- another of his property without due process of law violates the constitutional inhibition and his act is that of the State. White did not purchase by sections, and the excess, if any, has never been established by any authorized survey. How, then, could the State lawfully convey by patent to defendant sections in a township whose sectional lines were never run, and which lands in said township had previously been sold to plaintiff?

In the sale of public lands the Government and the pur-
46 chasers are governed by the same principles which apply to individual vendors and vendees.

The State should have first sued White for the supplement of the price.

The State alone could do so, as in the Buck case, but a second patentee cannot be vested with that power.

"If there exists an extent of more than what is specified in the contract, the buyer has a right either to give the supplement of the price or to recede from contract."

R. C. C., act 2493.

In all cases where the buyer has a right to recede from the contract the seller is bound to make him restitution, not only of the price, but also of the expenses occasioned by the contract.

R. C. C., 2497.

The evidence shows that Leovy obtained patents for sections and fractional sections in T. 22 S., R. 31 E., covered by plaintiff's patent issued three years previously.

A second patentee cannot be heard to impeach the prior patent for any fraud committed by the grantee against the State or any mistake committed by its officers acting within the scope of their authority. Counsel for defendant strenuously contend that "White's title is entirely null and void on its face," because "every statute of the Louisiana legislature requires that public land be sold by sections and fractions of sections, with a specified number of acres in each section."

Brief, page 22.

Reference to act 75 of 1880, entitled An act to readjust the State land office, &c., makes it clear to my mind that counsel are in error.

Sect. 11 reads as follows:

47 "That the public lands donated by the Congress to the State of Louisiana, designated as sea marsh or prairie, * * * shall be subject to entry and sale at the rate of 12½ cents per acre."

SEC. 3. "That it shall be the duty of the register to keep accounts of the sales of land donated to the State, in well-bound books, * * * setting forth the sections, part- of sections, township and range, district and parish, to whom and when sold and for what price."

White purchased under this act.

He bought "all the unsurveyed marsh in T. 22 S., R. 31 east, except sect. 16. He purchased in good faith from the State, the sovereign, through its duly ac-redited representative.

If the sections above quoted, upon which counsel for defendants rely, require or exact the register to sell public land of this nature by sections or fractions of sections, I am of the opinion that this sale to White could be annulled only by the State in a direct action, and that it cannot be attacked collaterally. Defendant is not vested with the power of the State in this respect.

Furthermore, in the Buck case, whose patent counsel for defendant alleged "was identically the same as the patent in this case"—Brief, page 5—

The Supreme Court declared that Buck's title to the land conveyed in his patent was good. His purchase was not by sections. I desire to reiterate that the evidence shows most positively and conclusively that the sectional lines of this township have never been run, nor have any sections or fractions of sections been surveyed so as to locate them by any official surveyor.

48 The evidence shows that White was in actual possession of the land covered by his patent. Actual possession of a part is actual possession of a whole.

The patent appears to me clear, absolute, and unmistakable in terms. It is plain and unambiguous in language and evident in meaning.

Viewed in connection with the receipt of the register, which shows that White paid $532 for the entry of all the unsurveyed sea marsh in this township, and the evidence adduced on the trial of this case, it cannot admit of any other construction.

Any other interpretation would be to destroy its purpose and

object. I have gone over this case very th-roughly and made a careful analysis of authority on the issues involved herein.

I appreciate the importance of this case, and after a careful examination of the question in all its *learnings* I have reached the conclusion that plaintiff's title to the land described in his petition is good, perfect, and complete, and that he should be maintained and quieted in his possession thereof.

For the reasons herein assigned, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff and against defendants, decreeing that they and each of them have slandered plaintiff's title to the land described in plaintiff's petition, to wit, "all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi river except section 16, in township 22 south, range No. 31 E., in the southeastern, west of the river land district, containing 3,840 acres," and that plaintiff be maintained and quieted in his possession thereof. It is further ordered, adjudged,
49 and decreed that the writ of injunction herein issued at plaintiff's instance be maintained and perpetuated, and that the reconventional demand of defendants be rejected and the injunction issued at the instance of Henry J. Leovy be dismissed with costs.

Rendered and signed in chambers by consent of parties this 23rd day of March, A. D. 1897.

(Signed) ROBERT HINGLE, *Judge.*

Agreement between Counsel.

Filed April 8th, 1897.

22nd Judicial District Court, Parish of Plaquemines.

ROBERT M. WHITE
vs.
AUGUSTUS F. LEOVY ET ALS. } No. 76.

It is agreed in case of appeal that the maps, plans, plats, diagrams, and patents filed with the pleadings offered in evidence or annexed or referred to in any bill of exception shall go up in the original to the appellate court without being copied in the transcript of appeal.

N. O., April 6th, 1897.

(Signed) E. HOWARD McCALEB,
Att'y R. M. White, Plaintiff and Appelle.
HENRY J. LEOVY &
A. E. LIVAUDAIS,
Attorneys for A. F. Leovy et als.

Petition of Appeal and Order.

Filed March 31st, 1897.

Twenty-second Judicial Dist. Court, Parish of Plaquemines, Louisiana.

ROBERT M. WHITE
vs.
R. S. LEOVY ET ALS. } No. 76.

50 To the honorable the twenty-second judicial district court in and for the parish of Plaquemines, State of Louisiana:

The petition of Augustus F. Leovy and Robert S. Leovy and Henry J. Leovy, defendants and plaintiffs in reconvention in the suit of Robert M. White *vs.* Robert S. Leovy, Augustus F. Leovy, and Henry J. Leovy, No. 76 of the docket of this honorable court, respectfully represents that petitioners are informed and verily believe that there is error to the prejudice of them and each of them in the final judgment herein rendered and signed by this honorable court on the 23rd day of March, 1897, in the above entitled and numbered cause in favor of plaintiff and defendant in reconvention, Robert M. White, and against your petitioners, defendants and plaintiffs in reconvention, and that your petitioners desire to take a suspensive appeal from said judgment.

Wherefore, the premises considered, your petitioners respectfully pray that a suspensive appeal be granted herein upon petitioners giving bond as the law directs, returnable to the supreme court of the State of Louisiana according to law, and that said plaintiff, Robert M. White, be duly cited to appear and answer said appeal; and your petitioners finally pray for general relief.

(Signed) A. E. LIVAUDAIS,
LEOVY & LEOVY,
Att'ys for Defendants & Plaintiffs, Petitioners in Reconvention.

Order.

Let a suspensive appeal be granted the petitioners herein, returnable in the supreme court of the State of Louisiana on the 3rd Monday in April, 1897, upon their giving bond with good and solvent security, conditioned as the law requires, in the sum
51 of twelve hundred dollars, and let Robert M. White, plaintiff and appellee, be duly cited to appear and to answer said appeal.

Parish of Plaquemines, March 31st, 1897.

(Signed) ROBERT HINGLE, *Judge.*

Bond of Appeal.

Filed March 31st, 1897.

Know all men by these presents that we, Augustus F. Leovy, Robert S. Leovy, and Henry J. Leovy, as principals, and Oscar Buras, Villire Marshall, and Andre Buras, as sureties, are held and firmly bound unto A. P. Alberti, clerk of court for the parish of Plaquemines or clerk of the 22nd judicial district court of the parish of Plaquemines, his successors, executors, administrators, and assigns, in the sum of twelve hundred dollars; for the payment whereof we bind ourselves *in solido*, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal and dated in the parish of Plaquemines on this 31st dat of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas the above bounded Augustus F. Leovy, Robert S. Leovy, and Henry J. Leovy have filed this day a petition of appeal from a final judgment rendered against them as def'ts and as pl't'ffs in reconvention in the suit of Robert M. White *vs.* Robert S. Leovy, Augustus F. Leovy, and Henry J. Leovy, No. 76 of the 22nd judicial district court of the parish of Plaquemines, on the 23rd day of March, 1897, and signed on the same day of March, 1897: Now, the condition of the above obligation *id* such that the above-bound Augustus F. Leovy, Robert S. Leovy, and Henry J. Leovy shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by
52 the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Oscar Buras, Villere Marshall, and Andre Buras shall be liable in their place.

R. S. LEOVY.
HENRY J. LEOVY.
ANDRE BURAS.
VILLERE MARSHALL.
MANUEL OSCAR BURAS.
Mark.

Signed, sealed, and delivered in the presence of—

A. E. LIVAUDAIS.
LOUIS L. HUNTINGTON.

STATE OF LOUISIANA:

Twenty-second Judicial District Court, Parish of Plaquemines.

I, A. P. Alberti, clerk of the 22nd judicial district court for the parish of Plaquemines, do hereby certify that the foregoing fifty-two pages do contain a correct and complete transcript of the record of pleadings and proceedings in the cause wherein Robert M. White is plaintiff and Augustus F. Leovy, Robert S. Leovy, and Henry J.

Leovy are defendants, instituted in the twenty-second judicial district court in and for the parish of Plaquemines, No. 209 of the docket of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Pointe a la Hache, parish of Plaquemines, State of Louisiana, this twenty-sixth day of April, 1897.

[SEAL.] A. P. ALBERTI,
Clerk of Court.

Twenty-second Judicial Dist. Court, Parish of Plaquemines, La.

ROB'T M. WHITE
vs.
AUG. F. LEOVY ET ALS. } No. 76.

53 It is agreed that the stipulation heretofore filed and signed by us relating to sending up maps, plans, plats, diagrams, and patents in the original to the appellate court shall extend to and include all copies of field-notes and certificates thereto offered in evidence or annexed to bills of exception filed in the court *a qua*.

All defects, errors, or irregularities in the certificate of the clerk are hereby waived, and it is agreed and admitted and it is a fact that the fifty-two pages preceding said clerk's certificate and the two documents marked "Testimony of plaintiff" and "Testimony of defendants, respectively" (being the originals transcribed by Arthur B. Leopold, duly appointed and qualified shorthand reporter and deputy clerk), do contain and are a true, correct, and complete transcript of all the documents filed, all the testimony and evidence adduced, and all the proceedings had upon the trial of this case except—

Patents marked A 1–13, both inclusive; patent headed "Patent No. 5467;" patent marked "Exhibit A, Plft." (page 88 *et seq.*);

Plans marked A 14, 15, 17; Exhibit D, Plft.; plan purporting to be made by Welman Bradford; plan purporting to be from Dep't of Interior of the United States;

Maps marked Exhibit F and map of State of Louisiana (pp. 107–110);

Two copies of field-notes, marked "A 19" (p. 111) and "Exhibit B, Plaintiff" (p. 119),

—the original of which are annexed to and made part of said transcript, in accordance with agreement of counsel, and are all the maps, plans, plats, diagrams, and patents and copies of field-notes and certificates thereto filed with the pleadings offered in evidence or annexed or referred to in any bill of exceptions.

It is further agreed that if anything that should be in the transcript should be found to have been omitted, — may be filed
54 in the appellate court before submission of case by either party. No such omission is now known, and this stipulation is made to cover possible oversights, and it is further agreed that either party may hereafter obtain and file at any time before sub-

mission of the case a perfect certificate of transcript, but this shall not be deemed necessary.

E. HOWARD McCALEB,
Att'y R. M. White, Appellee.
LEOVY & LEOVY,
Att'y for A. F. Leovy et al.

New Orleans, La., May 3rd, 1897.

Twenty-second Judicial District Court for the Parish of Plaquemines.

ROBERT M. WHITE
versus
AUGUST F. LEOVY ET ALS. } No. 76.

Testimony and note of evidence on behalf of plaintiff taken in open court at Pointe a la Hache, Louisiana, Hon. Robert Hingle, presiding, on Tuesday and Wednesday, December 22nd and 23rd, 1896.

Arthur B. Leopold, shorthand reporter.

Twenty-second Judicial District Court for the Parish of Plaquemines.

ROBERT M. WHITE
versus
AUGUST F. LEOVY ET ALS. } No. 76.

Testimony and note of evidence on behalf of plaintiff taken in open court at Pointe a la Hache, Louisiana, Hon. Robert Hingle, presiding, on Tuesday, December 22nd, 1896.

Appearances.

55 E. Howard McCaleb and E. H. McCaleb, Jr., attorneys for plaintiff.

James Wilkinson, A. E. Livaudais, and H. J. Leovy, Esqrs., attorneys for defendants.

Plaintiff offered in evidence patent issued by the State of Louisiana to Robert M. White, being patent No. 4058, dated November 10th, 1890, marked Exhibit "A."

By Mr. HENRY J. LEOVY: We object to the offering in evidence by plaintiff of that patent for the reasons, first, that that patent which is offered does not define the land claimed by the plaintiff, inasmuch as it states that it is for all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi river, except section 16, in township 22 south, range No. 31 east, in the south-eastern west of river land district, contsining 3,840 acres according to the official plat of the survey of said lands in the State land office, because the patent does not define the land, does not state sections or portions of sections, as required by the laws of the State.

2nd. Because it is irrelevant, because it does not refer to the lands claimed by the defendants.

To which objection the court rules that the plaintiff is claiming this land under this patent, and if there is any objection to this title the objection goes to the effect to be given to this patent, and not to its admissibility, and for this reason the court overrules the objection.

By Mr. WILKINSON: We reserve a bill.

Plaintiff offers next in evidence the field-notes, duly cer-
56 tified, of the Department of the Interior, General Land Office, office of U. S. surveyor general, of the field-notes of Connelley of this township 22 south, range 31 east, southeastern district of Louisiana, showing that these lands in said township 22 south, range No. 31 east, contain an estimate area of thirty-eight hundred and forty acres (3,840) marked "B."

Plaintiff offers next a certified copy of the approved map or survey, on file in the State land office at Baton Rouge, of the land in question, viz., township 22 south, range 31 east, southeastern district Louisiana, west of the Mississippi river, marked Exhibit "D."

ROBERT M. WHITE, sworn and examined on his own behalf, testified as follows:

By Mr. MCCALEB:

Q. Are you Robert M. White, plaintiff in this suit?
A. Yes, sir.
Q. After you obtained patent of land in township 22 what did you do?
A. Took possession of it.
Q. Immediately thereafter?
A. Shortly thereafter.

By Mr. LEOVY:

Q. What land?
A. I took possession of all land in township 22 south, range No. 31 east, west of lots fronting on the right bank of the Mississippi river, in the southeastern west of river land district.

By Mr. WILKINSON: We object to the proof of any ownership or any possession outside of the tract of land designated in that
57 patent or outside of the plan annexed to the patent.

By the COURT: The plaintiff must limit himself to the official plat or survey offered in evidence by him.

By Mr. MCCALEB:

Q. Mr. White, what did you do after the patent was issued to you offered in this case?
A. I took possession and cut willows for the jetty company.
Q. Who paid the taxes on that property?
A. I did.

By Mr. WILKINSON: Object, as the tax receipts are the best evidence.

By the COURT: Objection sustained.

By Mr. McCaleb:

Q. Did Mr. August F. Leovy or Mr. Robert S. Leovy ever slander your title to this land; and, if so, in what way?

A. They did; told parties I did not own those lands that I was cutting willows on.

Q. They told parties that you didn't own it?

A. I held possession for three years, cut willows, and then they took out an injunction against me and stopped me from cutting.

Q. Where is the place they cut willows—the same place where you did?

A. Within the same lines in the township where my title called for.

Q. Mr. White, do you claim ownership of section 16 in that township?

A. No, sir; that is kept for the schools. My title don't
58 call for it or the front lots.

Q. Mr. White, what is the value of the willows in this township?

A. I suppose twenty-five hundred dollars a year.

Defendants object to this testimony, and the court rules that it should go to the effect and not to its admissibility, and defendants reserve a bill.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. White, please look at the lands mentioned on the plat annexed to your patent (showing witness map), which you have offered in evidence, and show where the bayou is which you claim you have been cutting willows; please point out on the map.

A. It is not on the map, because my title calls for the whole township; it is not on this part.

By Mr. McCaleb: We object to any parole evidence being offered to alter, limit, or explain the patent and field-notes of the surveyor, Conelly, and now ask leave of court to file this exception and motion to strike out.

By Mr. Leovy: We object to this exception as part of the pleadings at this stage of the proceedings as coming too late, but as a motion to strike out we see no objection.

And thereupon counsel proceeded to argue the exception and motion to strike out filed by him on behalf of plaintiff, and at the conclusion thereof, the hour of adjournment having arrived, the court took time to consider and adjourned to the next day, Wednesday, December 23rd, 1896, at 9 o'clock a. m.

Wednesday, *December 23rd*, 1896—9 o'clock a. m.

59 Court met pursuant to adjournment.

Present: E. Howard McCaleb and E. H. McCaleb, Jr., att'ys

for plaintiff; James Wilkinson, A. E. Livaudais, and Henry J. Leovy, Esqrs., attorneys for defendants.

And thereupon the court delivered a written opinion and for the reasons therein stated ordered that—

1st. That that portion of defendants' answer and plea of reconvention alleging error in the official plat and survey made by G. F. Conelly in 1836 or any change in the patent and character of the marsh west of lots fronting on the right bank of the Mississippi in township 22 south, range No. 31 east, in the southeastern west of river land district, according to the official survey of land in the State land office, and also all averments of fraud contained in said answer and plea of reconvention, be stricken out, and that all evidence in support of said averments be excluded and disallowed.

2nd. That the defendants be allowed to show by proper evidence that they have a better and superior title than plaintiff to the sections in the township claimed by plaintiff.

Defendants' counsel reserve a bill of exceptions to the ruling of the court.

ROBERT M. WHITE, called to the witness stand, testified as follows:

By Mr. WILKINSON:

Q. Mr. White, you stated yesterday that you had been in the possession of certain lands which you are now suing for. Please look at this map and state whether the possession which you refer to was of the land contained in the plat to the east of the lines
60 upon this plan through sections two, eleven, fourteen, twenty-three, and twenty-six, or whether it was of lands to the west of said lines (showing witness map).

A. I was in possession of all lands in the township twenty-two, except the reservation of the front lots and section sixteen (16).

Q. Please state what sections upon this plat you cut willows upon—please look at this map and state what sections upon this property you cut willows upon.

A. All sections that the bayous pass through.

Q. Examine the sections, you have the map before you, that you cut willows in.

A. Sections four, nine, fifteen—part of fifteen—twenty-two, twenty-seven, part of thirty-four, part of thirty-five, where the bayous pass through, five, six, eight, seventeen, twenty, twenty-nine, thirty-two, part of thirty-three.

Q. About how many cords of willows did you cut in these sections?

A. Cut for two or three years.

Q. How many cords—how much were they sold —?

A. Sold for twenty-five cents a cord.

Q. How many did you sell?

A. I suppose some years I cut over two thousand, twenty-five hundred dollars ($2,000–$2,500)—willows.

Q. How much profit did you make?

A. I cut about ten thousand cords on that township in '91 and '92.

Q. How many have you cut since 1893?

A. I cut in 1891, 1892; I cut in 1893, but was stopped on account of the injunction.

Q. Did you get the twenty-five cents by agreement?

61 A. It was retained; I did not get it.

By Mr. LEOVY:

Q. Mr. White, didn't you make a contract with me?

A. No; I made it with Mr. Ubsdell.

The witness produces the agreement with Mr. Ubsdell, and plaintiff offers it in evidence, marked Exhibit "E."

By Mr. LEOVY:

Q. You made a contract in 1893 to supply willows to Mr. Ubsdell at the jump?

A. I did.

Q. Now, how much did you get from Mr. Ubsdell, and how much was received by Mr. Leovy?

A. He received twenty-five cents; I got eighty-five cents, and in case this matter was settled and decided in my favor——

Mr. McCaleb objects to witness explaining this contract, as the contract speaks for itself.

The court sustains the objection.

Q. Were you in possession at any time except when you were cutting willows?

A. Been on the land several times before and since.

Q. Since this suit?

A. Yes, sir; certainly.

By Mr. MCCALEB, JR.:

Q. Were you ever in possession—actual possession—of sections three, two, and eleven?

A. Yes.

Q. Give us the nature of this land. What kind of land is it?

A. The land is here cut up with bayous and covered with water—which you could float a boat. I am in the business for

62 twenty years; been over that land since 1876; cut willows, and have had contracts for the jetty company. I did not have my eyes closed; I knew where the willows grew. I wrote to Washington, got the proper approval, and went to Mr. Lanier. The whole tract is marsh.

Q. How much of this land is covered by this water you speak of?

A. Nine-tenths of the whole area. It is a partial township; has twelve or fifteen thousand acres in area, nine-tenths being water, and which Mr. C. Uncus Lewis, the surveyor, states has about nine hundred acres dry land.

By Mr. WILKINSON:

Q. You swear that nine-tenths of this property is water?
A. It is all sea marsh, except along the bayous.

By Mr. McCALEB: We now offer a certified copy or abstract from the assessment-rolls of the parish of Plaquemines in the name of Robert M. White.

Defendants object to this abstract being offered, except in so far as the lands in controversy are concerned, and upon plaintiff striking out in said abstract the lands not in question, plaintiff was permitted by the court to file said abstract.

Witness, continuing, states that when he got the tax receipts that it contained a different description of the land, and that it was his intention to have this error corrected.

Defendants object to witness giving his reasons, as the method is to appear before the police jury to have assessments corrected, and that the tax receipts themselves are the best evidence.

The court sustained the objection.

By Mr. WILKINSON:

Q. Mr. White, have you since this suit yourself entered a portion of lands in township 22 south, range 19 east, sections 12 and 13?

63 Mr. McCaleb objects to this question, which the court sustains.

Q. Have you in your possession patents to sections 12 and 13, in township 22 south, range 19 east, east of river?
A. East of the river I have—not in that township.
Q. I call upon you to produce these patents.
A. I have not got them here.
Q. Now, Mr. White, look at this letter from the State land office and state whether the statements contained in it are true or false.

Mr. McCaleb objects on the ground that the letter is a private communication from Mr. John S. Lanier to the defendant in this case and is not admissibly in evidence, it not being an official document and not under oath, and no opportunity is given to plaintiff in this case to cross-examine in relation thereto, and, second, that it is an attempt to prove by parole testimony title to real estate evidenced by writing.

The court rules:

That it is not a letter written by the plaintiff to the defendants, but one written by a third party, and the objection is a good one and is therefore sustained.

Defendants reserve a bill and annex to the bill the letter, and defendants here offer the letter and make same part of his bill.

Q. Mr. White, you say you have the patents which you refer to?
A. Yes, sir; but not here.
Q. Where are those patents?
A. In the city of New Orleans.

Q. I now ask you to produce those patents.

Mr. McCaleb objects to this question because the defendants were in possession of these facts anterior to the trial of this suit,
64 and if they required these patents they could have got them by a *subpœna duces tecum* or by commission, or they could have had copies thereof made at their expense.

The court sustains the objection.

By Mr. WILKINSON: We reserve a bill.

Q. Have you got any patents for that?

A. Yes, sir; fractional parts.

Plaintiff rests.

Twenty-second Judicial District Court for the Parish of Plaquemines.

ROBERT M. WHITE
versus } No. 76.
AUGUST F. LEOVY ET ALS.

Testimony and note of evidence on behalf of defendants taken in open court at Pointe a la Hache, Louisiana, Hon. Robert Hingle, presiding, on Wednesday, December 24rd, 1896.

Arthur B. Leopold, shorthand reporter.

Twenty-second Judicial District Court for the Parish of Plaquemines.

ROBERT M. WHITE
versus } No. 76.
AUGUST F. LEOVY ET ALS.

Testimony and note of evidence on behalf of defendants taken in open court at Pointe a la Hache, Louisiana, Honorable Robert Hingle, presiding, on Wednesday, December 23rd, 1896.

Appearances.

E. Howard McCaleb and E. H. McCaleb, Jr., attorneys for plaintiff.

James Wilkinson, A. E. Livaudais, and Henry J. Leovy, attorneys for defendants.

65 By Mr. WILKINSON: We offer in evidence thirteen patents sued on herein and which are annexed to and referred in our answer, marked Exhibits A 1, A 2, A 3, A 4, A 5, A 6, A 7, A 8, A 9, A 10, A 11, A 12, and A 13.

By Mr. MCCALEB: We object to the admission in evidence of these patents because they were issued in violation of law.

By the COURT: The court rules that the patents be admitted and that the objection shall go to the effect and not its admissibility; to which ruling counsel for plaintiff reserves and takes this note in lieu of a bill of exceptions.

By Mr. WILKINSON: We offer next a map from the surveyor general's office of the United States, marked Exhibit A 14.

By Mr. McCALEB: Counsel for plaintiff objects on the grounds, first, that this map cannot be offered, for it contradicts the official plat of survey, and because there are red lines running through the proposed plats which do not appear to have been surveyed under any proper authority.

The court sustains the objection, and defendants reserve a bill of exceptions and annex the map to said bill, marked Exhibit A 14.

Defendants offer the official map of the *locus in quo*, marked Exhibit A 15.

Plaintiff objects to this map on the ground that it was made in the year 1896, under the direction of the Department of Interior of the General Land Office, at Washington, after the United
66 States parted with the title to the land in question.

To which objection the court rules that it be admitted only to show the *locus in quo*.

Plaintiff reserves a bill of exception to the ruling of the court.

Defendants next offer in evidence certified abstracts of the entries of this land from the State land office, from the books which the State land office is required to keep, marked Exhibit A 16.

Plaintiff objects to the offering in evidence of the certified abstract of entries from the State land office books for the reason that it tends to contradict the patents.

The court rules that the objection goes to the effect and not to its admissibility; to which ruling plaintiff reserves a bill.

Defendants offer next in evidence a certified copy of the same plat as identical with the plat from the surveyor general's office of the Department of Interior, marked Exhibit A 17.

Plaintiff objects to it because it does not purport to be a copy of the official plat referred to in the patent. The official plat referred to in the patents is not in the State land office, whereas this plat purports to come from Washington.

The court rules that the objection goes to the effect and not to its admissibility; to which ruling counsel for plaintiff reserves a bill of exception.

WELMAN BRADFORD, Esq., sworn and examined on behalf of defendants, testified as follows:

By Mr. WILKINSON:

Q. What is your business?

A. Surveyor.

67 Q. How long have you been a surveyor?

A. Fourteen years.

Q. Did you make a survey of township 22 south, range No. 31 east, southeastern west of the river land district?

A. I did; portions of it; certain portions of it.

To which question and all questions to this witness counsel for plaintiff objects as going to show any survey of this township in

explanation or impeachment of the survey made in 1836 by G. F. Conelly, United States surveyor, on the grounds that parole evidence cannot be admitted to explain, alter, contradict, or vary the official survey upon which the patent of plaintiff issued; and (2nd) that no evidence is admissible to vary, alter, or contradict the survey of Conelly under the ruling of the court on the exception and motion to strike out.

Defendant states that it does not require this witness for the purpose of contradicting Conelly's survey or the patent which is controlled by said plat, but stands upon said survey; but the witness is examined for the purpose of *of* showing that the land claimed by the reconvenor is not part of the land described in said plat or patent, but are of lands differently situated over a mile to the westward of the western boundary of the land described in said patent.

To which counsel for plaintiff replies that he objects to any statements going to show that the township contained more land; and if there was more land than sold or patented to plaintiff, the State has its action against the plaintiff for the supplement of the price for such additional lands, but has no right to grant subsequent patents to other parties of land included in the township patented to the plaintiff in this case.

68 The court understands that defendants base their claim upon the patents which have been offered in evidence already; these patents fully explain themselves, and the claim of the plaintiff is also based on a patent which was likewise offered and also the official plat or survey, and I have ruled before that no evidence can be introduced to vary, alter, or change the nature of that patent, but the court will allow the evidence to be admitted only for the purpose of showing the *locus in quo*.

Plaintiff reserves a bill of exception.

By Mr. LEOVY:

Q. Mr. Bradford, have you not been often over this land, township 22 south, range No. 31 east?

A. Yes, sir.

Q. When did you first go over that land, and for what purpose? Were you in the employ of Captain Eads?

A. I think in the year 1889. I made a superficial examination and survey of these passes at the instance of the estate of the late Captain James B. Eads.

Q. Then did you go over the land afterwards?

A. In the year 1892 and also in 1893.

Q. At whose instance?

A. Your instance (Mr. Henry J. Leovy).

Q. Are you familiar with the character of that land?

A. I am.

Q. Will you state what is the character of the land, whether it is sea marsh or water? State fully the character of the whole township.

A. The front lots on the river are dry land for a distance of a

few chains back from the river; west of that there is a strip
69 of sea marsh several miles in width. In length as well as in width beyond this are bayous and outlets from the Mississippi river, each side of which is dry land varying in depth from one chain and more.

Q. How much is a chain?

A. A chain is sixty-six (66) feet.

Q. How many passes are there in that township?

A. (Witness examining map.) In township 22 south, range No. 31 east, southeastern district of Louisiana, west of *of* the river, I have found the following passes: Williams pass, Grand or Main pass, McIntyre or Mercantile pass, and Tiger pass, and several old passes, which are now closed, branching out from Williams pass and Grand pass.

Q. What is the character of the *al*nd between those passes?

A. Sea marsh.

Q. Where is West bay, Mr. Bradford; how far south; is there a township between that and West bay?

A. I will explain that by stating that in township 23 south, range Nos. 31 & 32 east, portions of the township face on the sea marsh, and west of the sea marsh is found what is known as West bay.

Q. What is south of township 22, range 31 east; is there a portion of another township?

A. Portions of township 23 S., R. 31 east.

Q. Now, Mr. Bradford, did you make that map from those sectional lines?

A. Yes, sir.

Q. Did you do it from your knowledge as a surveyor and personal examination of the map and land?

70 A. I did.

Q. Does it correspond with the map?

Plaintiff objects that after the United States had made this survey there was no necessity for any further survey in order to locate the lands, and there could be no further survey after that patent of any recognized force.

The court rules that the witness can use the map in order to refresh and assist his memory.

Q. Mr. Bradford, in using this map for the purpose of assisting your memory, can you state how far Williams pass is from the river—about?

A. By careful survey made from recognized starting points and corners, the same corners and starting points having been used and established by Government surveys under the direction of the surveyor general, I proceeded to run the lines fronting on the Mississippi river to what is known now as the Jump, down the same to the head of Williams pass, then down Williams pass, following the angles of same, to a point 346 chains from the place in the northwest corner of township 22 south, range 31 east, and east of that corner two hundred and seventy (270) chains and sixty (60) links

I arrived at the end of my survey of Williams pass. That would place me west of the east boundary of township 22 south, range 31 east, which covers the land in question. The same would be two miles forty-nine chains and thirty-six links west of the east boundary of this township.

Q. Williams pass, section four, how far is it from the western limits of that plan of Conelly, in section 4?

A. You mean west of the sea marsh?

Q. Yes, sir; west of the sea marsh.

71 Plaintiff objects to this question on the ground that the sectional lines have never been run.

(No ruling by court.)

Q. How far is Williams pass from the river?

A. The upper or lower end?

Q. The northern half.

A. Between a mile and a half and a mile and three-quarters.

Q. In the plat before you, Mr. Bradford, there is a plan of the sea marsh which was prepared by Conelly, the surveyor. On that plat is there not a scale — which you can tell or ascertain the distance on that map made by Conelly without reference to any red lines or sectional lines? Can you ascertain the width of that plan?

A. There is no scale on this plat, but the law requires that maps of townships and all surveys made by the Government requires that it should be made.

To which question and answer plaintiff objects on the ground that it tends to contradict or explain the field-notes or plat of Conelly, the surveyor.

Q. What does this map show? Does that map show the area of the front lots on the Mississippi river?

A. It does.

Q. Does it not also show the two corners of the township 22 south, range 31 east, the length of the township?

A. It does.

Q. Isn't that township six miles?

A. It is six miles.

Q. Now, from those facts can you state what is the width of that official map before you made by Conelly, showing the sea
72 marsh in that township?

Counsel for plaintiff object on the ground that Conelly's survey does not state the width of the sea marsh. This testimony would tend to contradict the field-notes of Connelly, who in his field-notes has given no distance to this marsh.

A. Yes; according to this official plat, the distance of the sea marsh at the northern end of this township is one-quarter of a mile wide; in the center of the township it is one mile, or section eighteen (18) of the river front, and at the lower end of the township, or section thirty-five, the width of the marsh would be one hundred and eleven chains (111), or a mile and a quarter or a mile and a half.

Q. Now, what is the width, Mr. Bradford, one-half mile north of the southern portion of this township, thirty-one?

A. That would be a distance of one hundred and eighteen chains, or a mile and a half.

Q. Now, Mr. Bradford, you know where Williams pass is. Is there not a space between that Connelly tract of land and Williams pass? Refresh your memory by looking at this map.

Counsel for plaintiff make the same objection, and reserve a bill.

A. There is a strip of land lying west of the western limits of Connelly's sea marsh, and show on his official plat the general course of Williams pass of a distance of a mile and a half in width.

Q. At what point?

A. Generally.

Q. Is there any place where that marsh reaches Williams pass?

73 A. There is no place where that marsh reaches Williams pass; approaches the marsh as described by Conelly, then the distance I have previously stated.

Defendants offer in evidence a map which was made by Mr. Bradford, with the sectional lines upon it made by him after a full examination of the land, marked Exhibit A 18.

Plaintiff's counsel object to the map made by Conelly being introduced in evidence, because after the survey of Conelly there was no necessity of any further survey in order to locate the lands. In fact, there could be no other survey after that time of any recognized force.

The court sustains plaintiff's objection, and the defendants reserve a bill of exceptions.

Defendants offer next in evidence the field-notes of Connelly of this survey, marked Exhibit A 19.

Defendants offer in evidence a map showing the extension of this land to the Mississippi river in township 22 south, range No. 32 east.

Q. Mr. Bradford, you stated that you surveyed these lands at the instance of Captain Eads?

A. I did.

Q. In what year?

A. I think in 1889.

Q. Well, at that time were the lands pretty much as they are now, prairie lands between the passes?

A. Practically the same.

Q. That was before Mr. White entered?

A. Yes.

Q. From what you saw of those lands from examination, can you form any idea how long they have been sea marsh?

74 A. Not definitely.

Q. Many years back?

A. Can't tell.

Cross-examination.

By Mr. McCaleb:

Q. Mr. Bradford, these lands are sea marsh now, are they—this land in township 22 south, range 31 east?

A. Except on the bank of the passes, which is, I think, dry.

Q. How much is there on the bank of the passes upland?

A. Narrow strips.

Q. How many acres outside of the sea marsh?

A. Oh, the only dry lands in that township west of Connelly's survey is marsh, is only to be found on the bank of these passes, and that only for a depth from one to two or probably three chains in width.

Q. Wasn't the upland subject to tidal overflow—the area in the whole township?

A. The entire area of actual dry land in this township lying west of Connelly's sea-marsh strip would be in the aggregate probably five hundred acres. This, as I said before, is composed of strips on every side of the various bayous or passes varying in depth from one, two to three chains.

Q. Now, what is the width of the large pass or bayou? Give its name.

A. Grand pass.

Q. Give the width of it.

A. The average width of Grand pass is about eight hundred (800) feet.

Q. What is its depth?

75 A. Never took sound of it; can't tell.

Q. Is it navigable—can it be navigated?

A. It is.

Q. For what kind or size of vessels?

A. I have seen towboats and steam launches navigate it; also luggers.

Q. Now, are there any other passes or bayous in that township twenty-two, in controversy in this case, navigable?

A. Williams pass.

Q. What is its width?

A. From one to two chains wide.

Q. What size vessels can navigate that pass?

—. Towboats.

Q. Any other?

A. Luggers could navigate it.

Q. Any other bayous there that are navigable besides the two mentioned by you?

A. I think Tiger pass is also navigable for boats and luggers.

Q. Were the sectional lines of township 22 south, range No. 31 east, in controversy in this case, ever run by Connelly? I ask you this question for the reason it appears from his survey that certain sections so and so and so and so—I want to ask you whether those sections referred to in Connelly's survey are sectional lines, or are

they merely the measurement of the frone lots, which he calls sections.

A. The sections described by Conelly in his field-notes and measurements refer to lots fronting on the river.

Q. Have the sectional lines of the township ever been run by Connelly?

76 A. Only the range line between ranges 31 and 32 east and portions of the southern boundary of the township as well as the northern boundary of the township, as shown in his official map.

Q. Now, in what portion of that township would be the school section, commonly known as section 16? Would it be in that township?

A. Connelly's map shows lot 16.

Q. I am talking about section 16, the school section of that township.

A. Connelly speaks of it as the location of that section.

Q. Have the sectional lines of this township ever been run by Connelly?

A. Only in so far as it shows on the plan.

Q. Now, in what portion of the township would section 16 be located?

A. Had not this been an original township, section 16 would have been located in the center.

Q. Does this section sixteen (16) seem to have been located by Connelly in his survey?

A. Only as I have before described, as being fronting on the river between section 15 on the north and 17 on the south.

Q. How far distant from the rear of the front lots would section sixteen (16) be?

A. (Witness refreshing memory from map.) Two miles and a quarter (2¼) at the north end, and two miles and three-quarters at the south end.

Q. And from the center of section 16?

A. Three miles and a half (3½).

Q. Does Grand pass run through any portion of section 16? If it were located, would it run through there?

77 A. If the court will allow me I will explain. In full answer to Mr. McCaleb's question it would run near the western corner and probably be included in a portion of section 16 on the west.

Q. Now, Mr. Bradford, are these lands except the front lots sea marsh?

A. Yes.

Q. How far below the Jump is the upper boundary of this township 22, about?

A. About four (4) miles.

Q. And the lower boundary is about ten miles?

A. Ten miles.

Q. At whose request did you go over this land?

A. What time?

Q. When did you last go over there?

A. In 1893.

Q. What time in 1893?

A. December, I think.

Q. Were you there in 1892 previous?

A. I made the surveys at the instance of Mr. Henry J. Leovy in 1892 as well as in 1893.

Q. When you made these surveys did you see any willows had been cut in that township?

A. Willows had been cut; I can state there had been cutting willows all over the passes.

Q. By whom?

A. I don't know.

Q. Did you inform Mr. Leovy of the fact that willows had been cut there or that there were willows being cut there in 1892 or 1893?

78 A. I don't know if I did; I don't remember.

Q. What is the character of the trees that grow on this township?

A. A stinted growth of willows and laurels.

Q. Are there any willows growing in the sea marsh or only along these passes and bayous?

A. Only along the passes and bayous.

Q. Are there any willows growing between the sixty feet, the distance you mentioned along the banks of the streams in the marsh intervening between these bayous and the other lands?

A. I believe there are, for the reason that in my field-notes I found old bayous which are now closed running from Williams pass in a southeasterly direction which would, in my opinion, lie between the bed of the present Williams pass and the western edge of Connelly's sea-marsh lines.

Q. Then the willows, which I understand you to say grow only upon the banks of those water-courses?

A. Yes, sir.

At the request of defendants it is admitted that prior to the filing of the answer in this case Robert M. White, plaintiff, stated to James Wilkinson, Esq., attorney for Henry J. Leovy, Esq., defendant, that he was going upon the lands which defendant in reconvention claims, and the lands were his and not the defendants', and that he was going to cut willows thereon and deliver the same to Mr. Ubsdell, of the jetty company; that he had a contract with said Mr. Ubsdell, and that he was going to sell the willows to the jetty company.

Defendants now *to* propose to show the value of the attorneys' fees in this suit; to which evidence counsel for plaintiff objects

79 because no attorneys' fees can be claimed in damages in reconvention, except in case of *in* injunction against a monied judgment.

The court sustains the objection, and defendants reserve a bill of exception.

ROBERT S. LEOVY, sworn and examined on his own behalf, testified as follows:

By Mr. LEOVY:

Q. Are you one of the defendants in this suit?
A. Yes, sir.
Q. Where are you living?
A. At Venice, Plaquemines parish, Louisiana.
Q. How long have you known that part of the country?
A. Have been knowing the upper portion of that country for fifteen years.
Q. Will you state what is the character of the land between Williams pass and the many passes in that township?
A. The character of the land is sea marsh.
Q. It is of a sea-marsh character?
A. I should imagine so; it has some boggy ground between there.
—. Is it above water or not?
A. Well, at times it is above, during the dry spell, and at other times, when it is raining, during the rainy season it is covered with water.
Q. What is the general character, usually?
A. Usually covered with water.
Q. What is called sea marsh?
A. Yes, sir.
Q. The whole of that land?
A. Yes, sir.
80 Q. Are there any passes of any importance besides Williams pass?
A. Yes; there is Tighe pass, McIntyre pass.
Q. How long a pass is that, about?
A. About four miles long.
Q. I understand you to say that the area of the township is sea marsh?
A. Yes, sir.
Q. State what you know about the possession of Mr. Henry J. Leovy since the purchase by him of these lands in 1893.
A. In the latter part of June I went down there as Henry J. Leovy's agent, took possession of the land about four miles down Williams pass, built a shed on the property, put a man down there to live, and have been cutting willows along those passes on and off for the last two or three years.
Q. When was that, you say?
A. In June, 1893.
Q. You built a little house and took possession?
A. Yes, sir.
Q. Will you state how many willows have been cut for the last two or three years and the amount received?
A. Has amounted to in the last two years about eight hundred or a thousand dollars a year, about.
Q. Has there been — much demand for willows as formerly?

A. Not using as many. They have been injured in the Jump and are not growing as rapidly as they use to.

Q. Do you know — what you attribute the failure *to* willows?

A. It is either owing to the storm of the — in 1893, the salt water, or the low stage of the river. They do not grow as rapidly as they formerly did.

81 Q. Have you denied the title to Mr. White to any lands what you claim?

A. Yes, sir.

Q. What lands did you deny his title to?

A. To the land along Williams pass.

Q. Claimed by whom?

A. Claimed by H. J. Leovy, along the Main pass, McIntyre pass, and Tiger pass.

Q. Did you ever deny his title to any land besides those you have described as claimed by Mr. Leovy?

A. Red pass. He also claims some land, but I am not positive about that.

Q. Mr. Leovy alleges in his defense that he was prevented by Mr. White from getting a contract with the jetty company during the year 1893 for willows. What have you to say in regard thereto?

Counsel for plaintiff object to this question for the reason that no damages can be claimed for acts done subsequent to the institution of this suit, and, secondly, that damages sustained can only be claimed by direct action on the bond as attorneys' fees.

Objection overruled by the court and bill reserved.

A. Mr. Henry J. Leovy lost by not securing that contract about twenty-five hundred dollars ($2,500).

Q. How was he prevented?

A. Mr. White stated to Mr. Ubsdell——

Plaintiff objects on the ground that this statement was made out of Mr. White's (the plaintiff) presence.

Objection sustained.

Q. You are Mr. Leovy's agent, are you not?

A. Yes, sir.

82 Q. As agent of Mr. Leovy, what do you know of that contract?

A. I went down to see Mr. Ubsdell——

Counsel for plaintiff objects to any testimony between witness and Mr. Ubsdell outside of Mr. White's presence.

Objection sustained.

Q. Just state the consequence of the interview.

A. That I could not get the contract as Mr. H. J. Leovy's agent.

Q. Who did get the contract?

A. There was some arrangement entered into afterwards between Mr. Henry J. Leovy and Mr. White. The nature of that agreement I don't know positively.

Q. You knew there was an agreement?
A. I knew there existed an agreement. Mr. Henry J. Leovy also entered into an agreement with Mr. Borrois.

By Mr. McCaleb:

Q. Is that agreement in writing?
A. Yes, sir.

Counsel for plaintiff ask for the production of this contract, and object to all parole testimony in regard — or in explanation of this agreement.
The court sustains the objection; the contract is the best evidence.

By Mr. Henry J. Leovy:

Q. Do you know where it is?
A. Down in the safe at the store.

By Mr. Wilkinson:

Q. Mr. Leovy, your father had also sued in this matter. Do you know whether or not your father had anything to do with these lands or made any claim thereof in any shape, form, or manner?
83 A. He has denied Mr. White's title to the lands along Williams pass and claimed by Henry J. Leovy, Main pass, McIntyre pass, and Tiger pass.
Q. Do you know whether your father or yourself have ever denied the title to the land comprised in the Connelly plat or patent annexed to Mr. White's patent?

Counsel for plaintiff object as being a leading question. Objection sustained.

Q. What have you to say in regard to denying the title to Mr. White in regard to Conelly's patent?

Counsel for plaintiff object, as that is a question of law; which objection is sustained by the court, and counsel for defendant reserve a bill.

No cross-examination.

Samuel E. Coon, being sworn on behalf of defendants, testified as follows:

By Mr. Wilkinson:

Q. Have you been living on this land claimed by Mr. Leovy in this suit?
A. Yes, sir.
Q. Whose house have you been living in?
A. A cabin of his that I put up.
Q. How long have you been there?
A. Two months.
Q. When?
A. In the year 1893, months of July and August.
Q. Has Mr. White got any houses put up on that land?

A. Not to my knowledge.

Q. Have you ever seen Mr. White about?

84 A. No.

Q. What pass did you live on?

A. Williams pass.

Q. How far down the pass?

A. About two and a half miles, I should judge.

Defendants offer in evidence an abstract from the sheriff's assessment-rolls to show the assessment of these lots claimed by Mr. Leovy for the years 1893, 1894, 1895, and 1896, marked Exhibit A 20.

Defendants close.

In rebuttal:

Mr. Robert M. White, plaintiff, called in rebuttal, sworn and examined on his own behalf, testified as follows:

By Mr. McCaleb:

Q. Mr. White, can you state whether or not Mr. Henry J. Leovy had knowledge of the issuance of your patent prior to June, 1893, when he took out his patent?

A. His nephew knew it.

Q. What nephew do you mean?

A. Rob't S. Leovy.

Counsel for defendants object to this evidence for the reason that it is an attempt to prove that Mr. Leovy had knowledge of the previous issuance of the patent filed in this case, together with the plat.

Plaintiff offers in evidence the receipt of John S. Lanier, registrar, dated Baton Rouge, La., August 27th, 1890, showing that R. M. White paid for the land in controversy.

Counsel for defendants object on the ground that it is not an official document, does not contain the signature of the gov-

85 ernor nor the seal of the State.

The court rules that the objection goes to the effect and not to its admissibility.

Bill reserved.

By Mr. McCaleb:

Q. Is that the receipt you received, Mr. White, which is signed by Mr. John S. Lanier, and is that his signature?

A. That is the receipt he gave me. He figured up the amount and I gave him a check for five hundred and fifty dollars ($550), and he gave me the change back, and sometimes afterwards he gave me the patent. He asked me if there was any oyster land there, and I said "No," as the water was fresh; he also said he had to consult with the attorney general.

Agreement.

It is agreed that this case should be submitted to the court upon the pleadings and evidence on file, reserving to both parties the

right to file briefs by or before the 15th day of January proximo, after which date the judge be, and he is hereby, authorized by agreement of counsel to render and sign whatever judgment may be rendered in the case out of term time and in vacation, both parties specially waiving the right to apply for a new trial within three days, as provided by law, and either or both parties being permitted to appeal from whatever judgment may be rendered within ten (10) days after notice of judgment thereof shall have been served upon the parties or their counsel.

86 PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Motion and Affidavit for Time.

Filed April 15th, 1897.

In the Supreme Court of the State of Louisiana.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 12501.

On motion of Leovy & Leovy, of counsel for defendants, appellants, and the annexed affidavit of counsel and the certificate of the clerk of the lower court to the effect that there has not been time enough for the completion of the transcript of appeal in this case being considered, it is ordered by the court that the appellants be granted further time until the first day of June, A. D. 1897, to have the transcript completed and to file it in this court.

Entered and filed April 15, 1897.

(Signed) T. McC. HYMAN, *Clerk.*

STATE OF LOUISIANA,
Parish of Plaquemines.

Twenty-second Judicial District Court.

I, the undersigned clerk of the aforesaid court, do hereby certify that owing to the fact that our regular jury term of court has convened and the docket of criminal and civil cases being large, requiring my constant attendance before court and that of my deputy, I am unable to complete the transcript in the suit of Robert M. White *vs.* August F. Leovy *et als.*, No. 76 of the docket of the aforesaid court, on appeal before the hon. the supreme court of Louisiana for the return day, the 3rd Monday in April, 1897.

I would therefore request an extension of time to enable me to prepare said transcript.

(Signed) A. P. ALBERTI,
[SEAL.] *Clerk of Court.*

87 H. J. Leovy, being duly sworn, deposes and says he is counsel for defendant, who is appellant; that the record is

very voluminous, and that it will require an extension until the first day of June, A. D. 1897, to enable the clerk of the lower court to complete the transcript of appeal in this case.

(Signed) H. J. LEOVY.

Sworn to & subscribed before me this 15th day of April, A. D. 1897, at the city of New Orleans.

(Signed) T. McC. HYMAN,
[SEAL.] *Clerk Supreme Court Louisiana.*

(Endorsed:) No. 12501. Supreme court of Louisiana. Robert M. White *vs.* Auguste F. Leovy *et al.* Extension of time. Filed Ap'l 15th, 1897. (Signed) Paul E. Mortimer, dep. clerk.

Motion and Order Extending Return Day.

(Extract from the Minutes, April 15th, 1897.)

NEW ORLEANS, THURSDAY, *April 15th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, associate justices. Absent: Newton C. Blanchard, associate justice.

ROBERT M. WHITE
vs.
AUGUSTE F. LEOVY ET ALS. } No. 12501.

On motion of Leovy and Leovy, of counsel for defendants, appellants, and the annexed affidavit of counsel and the certificate of the clerk of the lower court to the effect that there has not been time enough for the completion of the transcript of appeal in this case being considered, it is ordered by the court that the appellants be granted further time until the 1st day of June, A. D. 1897, to have the transcript completed and to file it in this court.

88 EXHIBIT A 1, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4924.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2700, N. S. L., June 1st, 1893, the east half of section No. nine, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant,

and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 125.

(Signed) JOHN S. LANIER,
Register State Land Office.

89 (Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 6859, folio 342, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. Filed July 29th, 1893. (Signed) E. Butler, clerk. No. 12501. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk. White *vs.* Leovy.

EXHIBIT A 2, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4874.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2656, N. S. L., 3rd May, 1893, the east half of section No. seventeen, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the third

day of May, in the year of our Lord one thousand eight
90 hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:
[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 100.
(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, No. 6856, folio 336, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. Filed July 29th, 1893. E. Butler, clerk. Filed Dec. 23rd, 1896. A. P. Alberti, clerk. No. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

EX-IBIT A 3, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4873.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2655, N. S. L., 3rd May, 1893, the east half of section No. eight, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging,
91 unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the third day of May, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:
[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 99.
(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, No. 4873, folio 338, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. 4874. Filed July, 1893. E. Butler, clerk. 4873. Filed Dec. 23rd, 1896. A. P. Alberti, clerk. No. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

EXHIBIT A 4, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4929.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2705, N. S. L., June 1st, 1893, the northeast quarter of section No. thirty-four, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing one hundred and sixty and $\frac{00}{100}$ acres, according to the official plat of the survey of
92 said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 127.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 6860, folio 344, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk. Filed Dec. 23rd, 1896. A. P. Alberti, clerk. Filed July 29th, 1893. E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. T. McC. Hyman, clerk.

EXHIBIT A 5, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4876.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the
93 State of Louisiana, purchased, per certificate No. 2658, N. S. L., 3rd May, 1893, the east half of section No. twenty-nine, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the third day of May, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 101.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 4876, folio 334, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk. 4876. Filed July 29th, 1893. E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

94 EXHIBIT A 6, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4872.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2654, N. S. L., 3rd May, 1893, the west half of section No. nine, in township No. twenty-two

south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the third day of May, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL] MURPHY J. FOSTER.

Record of patent, vol. 28, page 99.

(Signed) JOHN S. LANIER,
Register State Land Office.

95 (Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 6853, folio 330, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. 4872. Filed July 29th, 1893. (Signed) E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. T. McC. Hyman, clerk.

EXHIBIT A 7, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4875.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2657, N. S. L., 3rd May, 1893, the east half of section No. twenty, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together

with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the third day of May, in the year of our Lord one thousand eight
96 hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 100.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 6854, folio 332, of conveyances, this 14th day of June, A.D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. 4875. Filed July 29th, 1893. E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

EX-IBIT A 8, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4868.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per warrant No. 31, act 104 of 1888, and excess, all of section (4) four and all of section No. 5 (five), in township No. (22) twenty-two south, range No. (31) thirty-one east, in the southeastern west of river land district, containing twelve hundred and eighty acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, to-
97 gether with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the first day of May, in the year of our Lord one thousand eight hundred

and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 97.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, No. 6852, folio 328, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. 4868. Filed July 29th, 1893. E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

EX-IBIT A 9, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4928.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2704, N. S. L., June 1st, 1893, the east half of section No. twenty-seven, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

98 Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 127.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, No. 6862, folio 348, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. Filed July 29th, 1893. (Signed) E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

EXHIBIT A 10, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4927.

To all to whom these presents shall come, Greeting:

99 Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2703, N. S. L., June 1st, 1893, the east half of northwest quarter, west half of northeast quarter, and west half of southeast quarter of section No. twenty-two, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing two hundred and forty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, gra-ted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 126.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 6861, folio 346, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc.
100 Filed July 29th, 1893. (Signed) E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

EXHIBIT A 11, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4926.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2702, N. S. L., June 1st, 1893, the west half of section No. fifteen, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing three hundred and twenty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 126.

(Signed) JOHN S. LANIER,

101 *Register State Land Office.*

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 6863, folio 350, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. Filed July 29th, 1893. (Signed) E. Butler, clerk. No. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

EXHIBIT A 12, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4871.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2653, N. S. L., 3rd May,

1893, the whole of section No. six, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing six hundred and forty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Henry J. Leovy and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the
102 third day of May, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 98.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30 *Mo.* 6858, folio 340, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. 4871. Filed July 29th, 1893. (Signed) E. Butler, clerk. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. T. McC. Hyman, clerk.

EX-IBIT A 13, Offered by Defendant, Referred to at Page 53.

THE STATE OF LOUISIANA:

Patent No. 4925.

To all to whom these presents shall come, Greeting:

Whereas Henry J. Leovy, of the parish of Orleans, in the State of Louisiana, purchased, per certificate No. 2701, N. S. L., June 1st, 1893, the southwest quarter of section No. 10, in township No. twenty-two south, of range No. thirty-one east, in the southeastern west of the river land district, containing one hundred and sixty and $\frac{00}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does

give, grant, and sell, unto the said Henry J. Leovy and to
103 his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the first day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

By the governor:

[SEAL.] MURPHY J. FOSTER.

Record of patent, vol. 28, page 125.

(Signed) JOHN S. LANIER,
Register State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in my office, in Book 30, *Mo.* 6864, folio 352, of conveyances, this 14th day of June, A. D. 1893. (Signed) Louis S. Huntington, d'y clerk, etc. Filed July 29th, 1893. (Signed) E. Butler, clerk. No. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

PATENT 4058, Offered by Plaintiff, Referred to at Page —.

THE STATE OF LOUISIANA:

Patent No. 4058.

To all to whom these presents shall come, Greeting:

Whereas R. M. White, of the parish of Plaquemines, in the State of Louisiana, purchased, per certificate No. 2251, N. S. L., November 10th, 1890, all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi, except section No. sixteen, in
104 township No. twenty-two south, range No. thirty-one east, in the southeastern west of river land district, containing 3,840.00 acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said R. M. White and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said R. M. White and to his heirs and assigns forever.

In testimony whereof I, Francis Tillou Nicholls, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the tenth day of November, in the year of our Lord one thousand eigh- hundred and ninety, and of the Independence of the United States the one hundred and fifteenth.

By the governor:

[SEAL.] FRANCIS T. NICHOLLS.

Record of patent, vol. 27, page 32.

(Signed) JOHN S. LANIER,
Register of State Land Office.

(Endorsed:) Recorded, parish of Plaquemines, in Book No. 30, folio 424, of conveyances, in my office, this 7th day of July, A. D. 1893. (Signed) E. Butler, clerk, etc. Filed July 8th, 1893. (Signed) Louis S. Huntington, cl'k. No. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

PATENT No. 5467, Offered by Plaintiff, Referred to at Page —.

THE STATE OF LOUISIANA:

Patent No. 5467.

To all to whom these presents shall come, Greeting:

105 Whereas Robert M. White, of the parish of Plaquemines, in the State of Louisiana, purchased, per certificate No. 3037, N. S. L., dated M'ch 12th, 1896, east half of northeast quarter of section No. nineteen (19), in township No. twenty-two (22) south, range No. thirty-one (31) east, in the southeastern west of river land district, parish of Plaquemines, containing eighty and $\frac{0.0}{100}$ acres, according to the official plat of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said Robert M. White and to his heirs the above-described land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said Robert M. White and to his heirs and assigns forever.

In testimony whereof I, Murphy James Foster, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the 12th day of March, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

By the governor:

[SEAL.] (Signed) MURPHY J. FOSTER.

Record of patent, vol. 29, page 48.

(Signed) JOHN S. LANIER,
Register State Land Office.

106 I, John S. Lanier, register of the State land office, do hereby certify this to be a true and correct copy of patent No. 5467, of record in vol. twenty-nine (29), page forty-eight (48).

Given under my official signature and seal of office this 5th day of January, A. D. 1896.

(Signed) JOHN S. LANIER, *Register.*

Patent filed December 23rd, 1896.

(Signed) LOUIS S. HUNTINGTON, *D'y Clerk.*

No. 12501. White *vs.* Leovy. Supreme court of Louisiana. Filed May 3rd, 1897. (Signed) T. McC. Hyman, clerk.

107 T. 22 S., R. 31 E., S. E. dist. La., west of river.

Sec. 4.	Fractional	N. E. ¼	145.00 acres.
	"	N. W. ¼	143.00 "
	"	E. ½ of E. ½ and W. ½ of W. ½ of S. W. ¼	82.00 "
	"	S. E. ¼	135.80 "
Sec. 5.	"	N. E. ¼	95.30 "
	"	E. ½ & N. W. ¼ of S. E. ¼	66.60 "
	"	N. ½ and N. ½ of S. ½ of S. W. ¼	109.50 "
Sec. 6.	"	N. E. ¼	140.50 "
	"	S. E. ¼	148.80 "
	"	S. ½ and N. E. ¼ of S. W. ¼	102.50 "
Sec. 7.	"	W. ½ and N. E. ¼ of N. W. ¼	96.60 "
Sec. 8.	"	E. ½ of N. E. ¼	45:20 "
	"	S. E. ¼	124.00 "
Sec. 9.	"	N. ½ and S. E. ¼ of N. E. ¼	105.04 "
	"	N. E. ¼ of S. E. ¼	35.00 "
	"	W. ½ of S. W. ¼	58.00 "
Sec. 10.	"	W. ½ of S. W. ¼	70.00 "
Sec. 15.	"	N. W. ¼	142.00 "
	"	E. ½ of S. W. ¼	67.00 "
Sec. 17.	"	N. E. ¼	137.80 "
	"	S. E. ¼ of N. W. ¼	36.00 "
	"	S. E. ¼	104.90 "
Sec. 20.	"	N. E. ¼	114.90 "
	"	S. E. ¼	95.30 "
Sec. 22.	"	E. ½ of N. W. ¼	66.00 "
	"	W. ½ of N. E. ¼	67.00 "
	"	S. E. ¼	154.00 "
Sec. 27.	"	E. ½ of N. E. ¼	70.00 "
	"	S. E. ¼	148.00 "
Sec. 28.	"	W. ½ of N. W. ¼	76.00 "
	"	W. ½ of S. W. ¼	61.00 "
Sec. 29.	"	N. E. ¼	95.15 "
	"	S. E. ¼	117.90 "
Sec. 32.	"	W. ½ of N. E. ¼	37.20 "

108

	Fractional	S. E. ¼ of N. W. ¼.....	32.00 acres
	"	E. ½ of S. W. ¼.....	59.20 "
	"	W. ½ of S. E. ¼.....	40.00 "
Sec. 33.	"	N. W. ¼.....	128.75 "
	"	S. W. ¼.....	109.90 "
Sec. 34.	"	E. ½ of N. E. ¼.....	66.00 "
Sec. 35.	"	S. W. ¼ of N. W. ¼.....	35.00 "
		West ½ of S. W. ¼.....	65.40
		Total.....	3,829.24 acres

(Signed) C. UNCAS LEWIS, C. E., *Surveyor.*

(Here follow maps marked pp. 109 and 110.)

111

EXHIBIT A.

Field-notes.

Filed May 3rd, 1897.

ROBERT M. WHITE
vs.
AUGUSTE F. LEOVY ET ALS. } No. 12501.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF THE UNITED STATES SURVEYOR GENERAL,
NEW ORLEANS, LA., *October 5th*, 1893.

I hereby certify the attached copies of field-notes in T. 22 S., Rs. 31 & 32 E., southeastern district La. west of Mississippi river, to be correct extracts from the records of this office.

(Signed) CHAS. B. WILSON,
[SEAL.] *Surveyor General La.*

Field-notes.

T. 22 S., R. 31 E., S. E. dist. west of Mississippi river.

Survey of sections in T. 22, R. 31.

Beginning at the N. E. corner of the township and ran in front of section 1
S. 28° E. 15.50 chs. to the lower front corner of sec. 1 a willow 10 in. dia. N. 70° W. 76 lks. ran
West between sections 1 & 1. 8.00 chs. came to impassable sea marsh; saw the bay about 20 chs. distant.

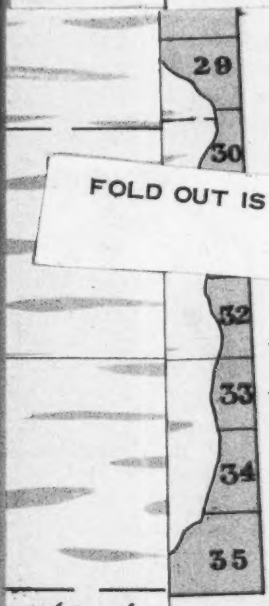
Survey of section 2.

Beginning at the lower front corner of sec. 1, and ran
S. 28° E. 15.50 chs. to the lower front corner of section 2. Raised a mound and set a post, run
West between section- 2 & 3.
6.00 chs. came to sea marsh. Saw the bay about 8 chs.

10650

S.E.D

R.



FOLD OUT IS TOO LARGE TO BE FILMED

W. White. J. Harris ... meing. October 18th 1893
... Jumps, near ... A. J. Connelly Esq. Dep. C.
... corner of Township 21 ... corner of Lot 6. thence S 70°
thence along left bank of ... S 5° E 317¾ links. E 6.35
S 32°30' W 10.78 S 2° E. ... 12.12. S 4½ E 1.70 S 5° E 7.51
stake and Flags thence ... E 20.33 ... 9.58 S 7¼ W 40.00
... commencement. (within and first ... on Milliams
160 acres of land more ... found evidences of
by interpolating the ...

... C.E.
Surveyor

112 Survey of section 3.

Beginning at the lower front corner of sec 2 and run
S. 23° E. 15.00 chs. to the lower front corner of sec. 3 whence a willow 12 in. dia. S. 60° W. 33 lks. ran.
West between sections 3 & 4. 7.00 chs. came to impassable sea marsh. Saw West bay about 10 chs. distant.

Survey of section 4.

Beginning at the lower front corner of sec 3 and ran,
S. 23° E. 15.00 chs. to the lower front corner of sec. 4, whence a willow 10 in. dia. N. 35° W. 85 lks.
West between sections 4 & 5. 6.50 chs. came to impassable marsh. Saw the bay about 15 chs. distant.

Survey of section 5.

Beginning at the lower front corner of sec. 4 and ran,
S. 23° E. 15.00 chs. to the lower front corner of section 5 a willow tree 10 in. dia. corner
West between sections 5 and 6. 8.00 chs. came to impassable sea marsh. Saw the bay about 20 chs. distant.

Survey of section 6.

From the lower front corner of sec. 5 ran
S. 23° E. 15.00 chs. to the lower front corner of sec. 6 a willow corner tree 10 in. dia.
West between sections 6 & 7. 6.50 chs. to marsh. Saw the bay about 20 chs. distant.

Survey of section 7.

From the lower front corner of sec. 6 ran
S. 23° E. 15.00 chs. to the lower front corner of section 7 a willow 12 in. dia. S. 8° E. 150 lks.
West between sections 7 and 8. 8.00 chs. came to impassable sea marsh. Saw the bay about 20 chs. distant.

113 Survey of section 8.

Beginning at the lower front corner of sec. 7 and ran
S. 23° E. 15.00 chs. to the lower front corner of *of* sec. 8 whence a willow 10 in. dia. N. 54° W. 32 lks. Willow 8 in dia. S. 81° E. 93 lks.
West between sections 8 & 9 10.00 chs. to impassable sea marsh. Saw the bay about 25 chs. distant.

Survey of section 9.

From the lower front corner of section 8, ran
S. 23° E. 15.00 chs. to the lower front corner of section 9 a willow 12 in. dia. N. 65° W. 81 lks.
West between sections 9 & 10 10.00 came to impassable sea marsh Saw the bay about 25 chs. distant

Survey of section 10.

From the lower front corner of sec. 9 ran

S. 23° E. 15.00 chs. to the lower front corner of section 10, raised a mound and set a post.

West between 10 & 11 10.00 chs. Came to marsh, saw the bay about 30 chs. distant.

Survey of section 11.

Beginning at the lower front corner of section 10 and ran

S. 27° E. 15.50 chs. to the lower front corner of sec. 11, whence a willow 9 in. dia. S. 15° W. 32 lks. Willow 10 in. dia. N. 10° E. 12 lks.

West between sections 11 & 12. 10.00 chs. came to impassable sea marsh, saw the bay about a ½ mile distant.

Survey of section 12.

From the lower corner of section 11 ran

S. 27° E. 15.50 chs. to the lower front corner of section 12 a willow corner tree 7 in. dia.

West between sections 12 and 13. 10.00 chs. came to impassable sea marsh, saw the bay about a ½ mile distant.

114

Survey of section 13.

Beginning at the lower front corner of section 12 and ran

S. 30° E. 16.00 chs. to the lower front corner of section 13; raised a mound and set a post

West between sections 13 & 14. 10.00 chs. came to impassable sea marsh Saw the bay about a ½ mile distant.

Survey of section 14.

Beginning at the lower front corner of section 13, and ran

S. 30° E. 16.00 to the lower front corner of section 14, raised a mound and set a post.

West between sections 14 and 15. 10.00 chs. came to impassable sea marsh Saw the bay about a ½ mile off.

Survey of section 15.

From the lower front corner of section 14, ran

S. 24° E. 15.00 chs. to the lower front corner of sec. 15, raised a mound, and set a post.

West between sections 15 and 16. 10.00 chs. came to impassable marsh, no bay in sight.

Survey of section 16.

Beginning at the lower front corner of sec. 15 and ran

S. 24° E. 15.00 chs. to the lower front. corner of sec 16. Raised a mound and set a post, ran

West between sections 16 & 17. 10.00 chs. came to impassable sea marsh, no bay in sight.

Survey of section 17.

From the lower front corner of section 16, ran
S. 24° E. 15.00 chs. to the lower front corner of section 17, raised a mound and set a post, no bay in sight.
West 11.00 to marsh.

115

Survey of section 18.

From the lower front corner of sec. 17 ran
S. 24° E. 15.00 chs. to the lower front corner of section 18 a willow 8 in. dia. N. 77° W. 27 lks. a willow 4 in. dia. S. 25° E. 10 lks.
West between sections 18 & 19. 11.50 chs. came to impassable sea marsh.

Survey of section 19.

Beginning at the lower front corner of section 18 and ran
S. 18° E. 14.00 chs. to the township corner; ran
West between section- 19 & 20. 11.00 chs. came to impassable sea marsh.

Survey of sections in T. 22, ranges 31 & 32.

Beginning at the township corner and ran
S. 19° E. 14.50 chs. to the lower front corner of sec. 1, whence a willow 5 in. dia. S. 88° W. 47 lks.
West between sections 1 & 2.
4.70 chs. to the west boundary. Thence west bet. secs. 20 & 21
15.00 " came to sea marsh.

Survey of sections 2 & 21.

From the lower front corner of section 1 ran
S. 19° E. 14.50 chs. to the lower front corner of sec. 2, a willow tree corner to 2 & 3 4 in. dia.
West between sections 2 & 3. 9.40 chs. to west boundary of the township, thence west between sections 21 & 22
19.00 chs. to impassable sea marsh.

Survey of sections 3 & 22.

From the lower front corner of section 2, ran
S. 19° E. 14.50 chs. to the lower front corner of section 3, a willow corner tree 5 in. dia.
West between sections 3 & 22 14.10 chs. to the west bdy. of the township. Thence west between 22 & 23 28.00 chs. to
116 impassable sea marsh.

Survey of sections 4 & 23.

From the lower front corner of section 3 ran
S. 15° E. 14.25 chs. to the lower front corner of sec. 4, whence a willow 9 in. dia. S. 76° W. 62 lks.
West between sections 4 & 5 17.80 to the west bdy. of the township. Thence west bet. secs 23 & 24 45.00 came to impassable marsh.

NOTE.—Within the length of the front of section 4, there is a bayou, leaves the river by about a dozen outlets, forming a bayou from 3.00 to 4.00 lks. wide.

Survey of sections 5 & 24.

Beginning at the lower front corner of sec. 4, and ran
S. 15° E. 14.25 to the lower front corner of sec. 5. Raised a mound and set a post.
West between sections 5 & 6 21.50 to the west bdy. of the township. Thence west between secs. 24 & 25. 48.00 came to impassable sea marsh.

Survey of sections 6 & 25.

S. 15° E. 14.50 to the lower front corner of sec. 6, raised a mound and set a post.
West between sections 6 & 7 25.25 came to the west bdy. of the township. Thence west between sections 25 & 26. 47.00 came to impassable sea marsh.

Survey of sections 7 & 26.

Beginning at the lower front corner of sec. 6, and ran
S. 10° E. 14.00 to the lower front corner of section 7, a willow corner tree 9 in. dia.
West between secs. 7 & 8 27.70 to the west bdy. of the township. Thence west between 26 & 27 49.00 to impassable sea marsh.

117

Survey of sections 8 & 27.

From the lower front corner of section 7, ran
S. 10° E. 14.00 to the lower front corner of sec. 8 a willow 8 in. dia. N. 5° W. 73 lks.
West between sections 8 & 9. 30.10 came to the west boundary of the township, thence west between 27 & 28. 45.00 came to impassable sea marsh.

Survey of sections 9 & 28.

S. 10° E. 14.00 to the lower front corner of section 9, raised a mound, and set a post.
West between sections 9 & 10. 32.50 came to the west bdy. of township, thence west between 28 & 29. 50.50 came to impassable sea marsh.

Survey of sections 10 & 29.

Beginning at the lower front corner of section 9, and ran

S. 10° E. 14.00 to the lower front corner of sec. 10, a willow corner tree 7 in. dia.

West between sections 10 & 11. 35.00 came to west bdy. of the township, thence west, between sections 29 & 30. 40.00 came to impassable sea marsh.

Survey of sections 11 & 30.

From the lower front corner of sec. 10, ran S.

South 14.00 to the lower front corner of section 11 a willow 5 in. dia. N. 10° E. 46 lks. a willow 8 in. dia. S. 15° E. 46 lks.

West between sections 11 & 12. 35.00 came to the W. bdy. of township.

Survey of sections 12 & 31.

South 14.00 chs. to the lower front corner of sec. 12.

West between sections 12 & 13. 34.95 came to the west bdy. of the township, thence west bet. sections 31 & 32. 38.00 came to impassable marsh.

118

Survey of sections 13 & 32.

Beginning at the lower front corner of section 12 and run,

S. 4° W. 14.00 chs. to the lower front corner of sec. 13, a willow 10 in. dia. S. 78° W. 80 lks.

West between sections 13 & 14. 34.00 to the W. bdy. of the township thence west between sections 32 & 33. 38.50 to impassable marsh.

Survey of sections 14 & 33.

From the lower front corner of section 13, ran

S. 20° W. 14.50 to the lower front corner of section 14, raised a mound and set a post

West between sections 14 & 15. 29.00 to the west bdy. of the township, thence west between 33 & 34. 37.00 came to impassable sea marsh.

Survey of sections 15 and 34.

S. 20° W. 14.50 to the lower front corner of section 15, raised a mound and set a post

West between sections 15 & 16. 24.06 to the west bdy. of the township thence west between sections 34 & 35. 36.00 came to impassable sea marsh.

Survey of section- 16 & 35.

Beginning at the lower front corner of section 15 and ran

S. 20° W. 8.00 to a bayou 150 lks. wide course west. 13.00 to the corner of the township.

March, 1836.

(Signed) G. F. CONNELLY,
Deputy Surveyor.

Variation, 9° east.

Examined and approved by H. T. Williams, surveyor general La., on June 27th, 1836.

Endorsed: Field-notes in T. 22 S., Rs. 31 & 32 E., S. E. dist. La., W. of river. Filed Dec. 23, 1896. A. P. Alberti, clerk. A 19, Def't. No. 12501. Supreme court of Louisiana. Filed May 3, 1897. (Signed) T. McC. Hyman, clerk. White *vs.* Leovy.

119 EXHIBIT B.

Field-notes.

Filed May 3rd, 1897.

ROBERT M. WHITE
vs.
AUGUSTE F. LEOVY ET ALS. } No. 12501.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
OFFICE OF U. S. SURVEYOR GENERAL,
NEW ORLEANS, LA., *November 25th*, 1896.

I hereby certify the attached field-notes in T. 22 S., Rs. 31 and 32 E., southeastern dist. La., to be correct extracts from the approved field-notes on file in this office.

[SEAL.] (Signed) CHAS. H. DICKINSON,
Surveyor General La.

T. 22 S., R. 31 E., southeastern dist. La.

Survey of sections in T. 22 R. 31 beginning at the N. E. corner of the township and ran in front of section 1 S. 28 E. 15.50 to the lower front corner of sec. 1 a willow 10 in. dia. N. 70.

8.00 W. 76 lks. ran west bet. sections 1 2 came to impassable sea marsh saw the bay about 20 chs. distant.

Survey of section 2.

Beginning at the lower front corner of sec. 1 and ran S. 28 E. 15.50 to the lower front corner of sec. 2 raised a mound and set a post, ran west between sections 2 & 3.

6.00 came to sea marsh, saw the bay about 8 chs.

Survey of section 3.

Beginning at the lower front corner of sec. 2 and ran S. 23 E. 15.00 to the lower front corner of sec. 3, whence a willow 12 in. dia. S. 60 W. 55 lks. ran west between sections 3 & 4
7.00 came to impassable sea marsh, saw west bay about 10 chs. dist.

120 Survey of section 4.

Beginning at the lower front corner of sec. 3 and ran S. 23 E. 15.00 to the lower front corner of sec. 4 whence a willow 10 in. dia. N. 35 W. 85 lks. west bet. secs. 4 & 5.
6.50 came to impassable marsh saw the bay about 15 chs. dist.

Survey of section 5.

Beginning at the lower front corner of sect. 4 and ran S. 23 E. 15.00 to the lower front corner of sec. 5 a willow tree 10 in. dia. corner west between secs. 5 & 6.
8.00 came to impassable sea marsh saw the bay about 20 chs. dist.

Survey of section 6.

From the lower front corner of sec. 5 ran S. 23 E. 15.00 to the lower front corner of sec. 6 a willow corner tree 10 in. dia. west bet. sections 6 & 7.
6.50 to marsh, saw the bay about 20 chs. distant.

Survey of section 7.

From the lower front corner of sec. 6 ran S. 23 E. 15.00 to the lower front corner of sec. 7 a willow 12 in. dia. S. 8 E. 150 lks. west bet. sections 7 & 8.
8.00 came to impassable sea marsh saw the bay about 20 chs. distant.

Survey of section 8.

Beginning at the lower front corner of sec. 7 and ran S. 23 E. 15.00 to the lower front corner of section 8 whence a willow 11 in. dia. N. 54 W. 32 lks. a willow 8 in. dia. S. 81 E. 93 lks. west bet. sections 8 & 9.
10.00 came to impassable sea marsh, saw the bay about 25 chs. dist.

Survey of section 9.

From the lower front corner of section 8 ran S. 23 E. 15.00 to the lower front corner of sec. 9 a willow 12 in. dia.
121 N. 65 W. 81 lks. west bet. secs. 9 & 10.
10.00 came to impassable sea marsh, saw the bay about 25 chs. distant.

Survey of section 10.

From the lower front corner of sec. 9 ran S. 23 E. 15.00 to the lower front corner of sec. 10 raised a mound and set a post. West bet. sections 10 & 11.

10.00 came to marsh, saw the bay about 30 chs. dist.

Survey of section 11.

Beginning at the lower front corner of sec. 10 and ran S. 27 E. 15.50 to the lower front corner of sec. 11 whence a willow 9 in. dia. S. 15 W. 32 lks. a willow 10 in. dia. N. 10 E. 12 lks. West between sections 11 & 12.

10.00 came to impassable sea marsh, saw the bay about a ½ mile distant.

Survey of section 12.

From the lower corner of sec. 11 ran S. 27 E. 15.50 to the lower court front corner of sec. 12 a willow corner tree 7 in. dia. West bet. sections 12 and 13.

10.00 came to impassable sea marsh, saw the bay about a ½ mile dist.

Survey of section 13.

Beginning at the lower front corner of sec. 12 and ran S. 30 E. 16.00 to the lower front corner of sec. 13 raised a mound and set a post west between sections 13 & 14.

10.00 came to impassable sea marsh, saw the bay about a ½ mile distant.

Survey of section 14.

Beginning at the lower front corner of section 13 and ran S. 30 E. 16.00 to the lower front corner of sec. 14, raised a mound and set a post west bet. sections 14 & 15.

10.00 122 came to impassable sea marsh, saw the bay about a ½ mile off.

Survey of section 15.

From the lower front corner of sec. 14 ran S. 24 E. 15.00 to the lower front corner of sec. 15, raised a mound and set a post, west between 15 & 16.

10.00 came to impassable marsh, no bay in sight.

Survey of section 16.

Beginning at the lower front corner of sec. 15 and ran S. 24 E. 15.00 to the lower front corner of sec. 16, raised a mound & set a post. Ran west bet. sections 16 & 17.

10.00 came to impassable sea marsh, no bay in sight.

Survey of section 17.

From the lower front corner of section 16 ran S. 24 E. 15.00 to the lower front corner of sec. 17, raised a mound & set a post, no bay in sight.

West 11.00 to marsh.

Survey of section 18.

From the lower front corner of sec. 17 ran S. 24 E. 15.00 to the lower front corner of sec. 18 a Willow 8 in. dia. N. 55 W. 27 L. Willow 4 in. dia. S. 25 E. 10 L. West bet. 18 & 19.

11.50 came to impassable sea marsh.

Survey of section 19.

Beginning at the lower front corner of section 18 and ran S. 18 E. 14.00 to the township corner ran west between sections 19 & 20.

11.00 came to impassable sea marsh.

Survey of sections in T. 22, ranges 31 & 32.

Beginning at the township corner and ran 19 E.
123 14.50 to the lower front corner of section 1, whence a willow 5 in. dia. S. 77 W. 47 lks. West bet. secs. 1 & 2.
4.70 to the west boundary. Thence west between secs. 20 & 21.
15.00 came to sea marsh.

Survey of sections 2 & 21.

From the lower front corner of section 1 ran S. 19 E. 14.50 to the lower front corner of sec. 2 a willow tree corner to 2 & 3 4 in. dia. west bet. secs. 2 & 3.

9.40 to west bdy. of the township thence west between secs. 21 & 22.

19.00 to impassable sea marsh.

Survey of sections 3 & 22.

From the lower front corner of section 2 ran S. 19 E. 14.50 to the lower front corner of section 3 a willow corner tree 5 in. dia. west bet. sections 3 & 4.

14.10 to the west bdy. of the township thence west between 22 & 23.

28.00 to impassable sea marsh.

Survey of sections 4 & 23.

From the lower front corner of sec. 3 ran S. 15 E. 14.25 to the lower front corner of section 4 whence a willow 9 in. dia. S. 76 W. 62 lks. west bet. secs. 4 & 5.

17.80 to the west bdy. of the township, thence west bet. sects. 23 & 24.

45.00 came to impassable marsh (note) within the length of the front of section 4, there is a bayou leaves the river by about a dozen outlets forming a bayou from 3.00 to 4 lks. wide.

Survey of sections 5 & 24.

Beginning at the lower front corner of section 4 and ran S. 15 E. 14.25 to the lower front corner of sec. 5 raised a mound and set a post. West between sections 5 & 6.

21.50 to the west bdy. of the township, thence west between sections 24 & 25.
48.00 came to impassable sea marsh.

124 Survey of sections 6 & 25.

S. 15 E. 14.50 to the lower front corner of section 6 raised a mound and set a post, west between secs. 6 & 7.
25.25 came to the W. bdy. of the township thence west between sections 25 & 26.
47.00 came to impassable sea marsh.

Survey of sections 7 & 26.

Beginning at the lower front corner of section 6 and ran S. 10 E. 14.00 to the lower front corner of section 7 a willow corner tree 9 in. dia. west bet. secs. 7 & 8.
27.70 to the west bdy. of the township, thence west between 26 & 27.
49.00 to impassable sea marsh.

Survey of sections 8 & 27.

From the lower front corner of sec. 7 ran S. 10 E. 14.00 to the lower front corner of section 8 a willow 8 in. dia. N. 5 W. 73 lks. west between sections 8 & 9.
30.10 came to the west bdy. of the township thence west bet. 27 & 28.
45.00 came to impassable sea marsh.

Survey of sections 9 & 28.

S. 10 E. 14.00 to the lower front corner of section 9 raised a mound and set a post. West between secs. 9 & 10.
32.50 came to the west bdy. of township thence west bet. 28 & 29.
50.50 came to impassable sea marsh.

Survey of sections 10 & 29.

Beginning at the lower front corner of section 9 and ran S. 10 E. 14.00 to the lower front corner of section 10 a willow corner tree 7 in. dia. West between sections 10 & 11.
35.00 to the west bdy. of the township thence west bet. sections 29 & 30.
40.00 came to impassable sea marsh.

125 Survey of sections 11 & 30.

From the lower front corner of section 10 ran south 14.00 to the lower front corner of section 11 a willow 5 in. dia. N. 10 E. 46 lks. a willow 8 in. dia. S. 15 E. 46 lks. west between sections 11 & 12.
35.00 came to the W. bdy. of township.

FOLD OUT IS TOO LARGE TO BE FILMED

Survey of sections 12 & 31.

South 14.00 to the lower front corner of section 12 west between sections 12 & 13.

34.95 came to the west bdy. of the township. Thence west between secs. 31 & 32.

38.00 came to impassable marsh.

Survey of sections 13 & 32.

Beginning at the lower front corner of section 13 and ran S. 4 W. 14.00 to the lower front corner of sections 13 a willow 10 in. dia. S. 78 W. 80 lks. west bet. secs. 13 & 14.

34.00 to the W. bdy. of the township, thence west bet. secs. 32 & 33

38.50 to impassable marsh.

Survey of sections 14 & 33.

From the lower front corner of section 13 ran S. 20 W. 14.50 to the lower front corner of section 14 raised a mound & set a post. West between secs. 14 & 15.

29.00 to the W. bdy. of the township thence west between 33 & 34

37.00 came to impassable sea marsh.

Survey of sections 15 & 34.

S. 20 W. 14.50 to the lower front corner of section 15, raised a mound & set a post. West between sections 15 & 16.

24.06 to the west bdy. of the township thence west bet. secs. 34 & 35

36.00 came to impassable sea marsh.

126 Survey of sections 16 & 35.

Beginning at the lower front corner of section 15 and ran S.

13 20 W. 8.00 to a bayou 150 lks. wide course west to the corner of the township.

March, 1836.

(Signed) G. F. CONNERLY,
Deputy Surveyor.

Endorsed: Filed Dec. 23, '76. (Signed) Louis S. Huntington, d'y. Endorsed: 12501. Supreme court of Louisiana. Filed May 3, 1897. (Signed) T. McC. Hyman, clerk. White *vs.* Leovy.

(Here follow maps marked pp. 127, 128, 129, 130, 131, & 132.)

133 *Continuance.*

(Extract from the Minutes.)

NEW ORLEANS, WEDNESDAY, *June* 16, 1897.

Acting under the instructions of his honor Mr. Justice Watkins, the presiding justice, Mr. La Branche, the deputy of the civil sheriff

of the parish of Orleans, at the hour of 12 o'clock m., postponed the opening of the court until 1 o'clock p. m.

At the hour of 1 o'clock p. m. the court was duly opened.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices. Absent: Francis T. Nicholls, chief justice.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET AL. } No. 12501.

This cause came on this day to be heard and was argued by Mr. E. Howard McCaleb, on behalf of the plaintiff, appellee, until 3 o'clock p. m., the usual hour for the adjournment of the court, when the court ordered the cause to be continued until tomorrow, Thursday, the 17th of June instant, at 11 o'clock a. m., for resumption of argument.

Cause Heard and Submitted.

(Extract from the Minutes.)

NEW ORLEANS, THURSDAY, *June 17th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices. Absent: Francis T. Nicholls, chief justice.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 12501.

The trial of this cause, continued from yesterday, Wednesday, the 16th day of June instant, was this day resumed, and having heard
argument from Mr. Henry J. Leovy, of counsel for the de-
134 fendants, appellants, followed by Mr. Victor Leovy, on the
same side, and from Mr. E. Howard McCaleb, on behalf of the plaintiff, appellee, the court took the cause under advisement upon the briefs for the respective parties and the papers now on file.

Agreement and Certificate of Approval.

(Filed June 17th, 1897.)

DEPARTMENT OF THE INTERIOR, R. C. L.
GENERAL LAND OFFICE, D. T. P.
WASHINGTON, D. C., *May 10th*, 1889. L. J. W.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed paper, being a copy of so much of approved list No. 1, New Orleans district, Louisiana, act of March 2, 1849, as relates to townships 22 and 23 S., of R. 31 E., west of Mississippi river, is a true and literal exemplification of the same as it appears on the file of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) S. M. STOCKSLAGER,
[SEAL.] *Commissioner of the General Land Office.*

No. 1.

List of swamp and overflowed lands unfit for cultivation selected as inuring to the State of Louisiana under the act of Congress approved March 2nd, 1849, in the district of lands subject to sale at New Orleans, Louisiana, to the approval of which no objections appear on the tract books.

Parts of sections.	No. of section.	No. of township.	No. of range.	Area.	Estimated area.
* *	*	*	*	*Acres. Hdths.* *	*Acres. Hdths.* *
All the unsurveyed marsh west of lots fronting on the right bank of Mississippi river in township	.....	22	31 E.	Except sec. 16.	3,840.00
* *	*	*	*	*	*
135 All the unsurveyed sea marsh west of lots fronting on the right bank of the S. W. pass of the Mississippi river & that east of lots fronting on east bank of said pass, in township..... ...	.....	23	31	Except sec. 16.	4,000.00
* *	*	*	*	*	*

GENERAL LAND OFFICE, *January 9th*, 1852.

Respectfully submitted for approval, subject to all valid objections, May 4th, 1852.

(Signed) J. BUTTERFIELD,
Commissioner.

Approved in accordance with provisions of 2nd section of act of 2nd March, 1849.

(Signed) ALEX. H. H. STUART.

May 6th, 1852.

(Endorsed:) No. 12501. Filed June 17, 1897. (Signed) T. M. C. Hyman, clerk.

Supreme Court of Louisiana.

ROBERT M. WHITE, Plaintiff, Appellee,
vs.
AUGUSTE F. LEOVY ET ALS., Def'ts, Appellees. } No. 12501.

It is agreed that document marked Exhibit "C," being approval by the Commissioner of the General Land Office of list of swamp and overflowed land unfit for cultivation, selected as inuring to the State of Louisiana under the act of Congress approved March 2, 1849, in the district of lands subject to sale at New Orleans, Louisiana, approved by Alex. H. H. Stuart May 6th, 1852, offered in evidence by plaintiff and appellee (Robert M. White) in the
136 lower court, be filed and received as evidence and as part of the transcript in the supreme court.

(Signed) E. HOWARD McCALEB,
E. H. McCALEB, JR.,
Att'ys for Pl'ft, Appellee.

(Signed) LEOVY & LEOVY,
Att'ys — Def'ts, Appellants.

New Orleans, June 16, 1897.

(Endorsed:) Supreme court. White *vs.* Leovy. Agreement and certificate of approval. Filed June 17, 1897. (Signed) T. McC. Hyman, clerk.

Opinion of the Court.

(Filed December 13th, 1897.)

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *December 13th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

137 ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 12501.

Appeal from the twenty-second judicial district, parish of Plaquemines.

This is an action of jactitation or slander of title, the plaintiff alleging possession of and a legal title to the land in controversy, and the defendants justifying under a superior title, and also alleging possession of parts of the territory which is alleged to be covered

by and included in the calls of the plaintiff's patent, each party alleging the slander of their respective titles and claiming damages of the other.

Havard *vs.* Atkins, 24 A., 511;
Clarkston *vs.* Vincent, 32 A., 613;
Dalton *vs.* Wickliffe, 35 A., 355;
Gay *vs.* Ellis, 33 A., 249;
Sully *vs.* Spearing, 40 A., 558:

The tenor of these decisions is that in such an action as this the defendant carries the burden of clearly establishing his claim to the property in dispute, having alleged ownership and possession. In such an action he is bound to succeed on the strength of his own title, and not upon the weakness of his adversary's.

Both parties found their claims of ownership upon patents, though of different dates, that of the plaintiff bearing date 10th of November, 1890, and those of the defendants in May and June,
138 1893, and all having the signature of the governor and register of the land office.

The description of the land which was purchased by the plaintiff, which was evidenced by the patent which issued to the plaintiff, is of the following tenor, viz: "All the unsurveyed marsh west of lots "fronting on the right bank of the Mississippi, except section No. "sixteen (16), in township twenty-two (22) south, of range thirty-"one (31) east, in the southeastern west of the river land district, "containing thirty-eight hundred and forty (3,840) acres, according "to the official plat of the survey of said lands in the State land "office."

The number of the patent is 4058, and it states that the purchase was made with certificate No. 2251, N. S. L.

The plaintiff's petitions, original and supplemental, when taken together, contain the same description as that in the patent, and it alleges his possession and ownership of the whole of said lands, the slander of his title by August F. Leovy and H. J. Leovy and the resulting damages, and his prayer is for citation and judgment sustaining and perpetuating his injunction restraining them from entering on said premises and from further slandering and disavowing his title and for two thousand dollars' damages.

The answer of the defendant H. J. Leovy is to the effect that the land claimed by the plaintiff and called for by his patent "was "entered according to an official plat or survey made by G. F. Con-"nelly in 1836, (and) * * * was all within a distance of less "than two miles of the Mississippi river, and all territory to the west "of that was at the date of that survey, and by the plat by which "White claims to have bought, West bay.

"That a few years after Connelly made said survey the Jump "outlet broke through, and the accumulation on the seaward side
"of said marsh and in said bay gradually raised the bed of
139 "said bay until the whole of said West bay became marsh
"land, connecting with swamp land to the westward, and at "the time of said lands being transferred to the State, in 1849 and "1850, by Congress it was not a navigable bay or part of the sea."

The answer then charges that the plaintiff, well knowing all these facts, and endeavoring to perpetrate a fraud upon the State, "entered "the lands originally allotted by Connelly, and under his patent "4058 is endeavoring to claim over sixteen thousand (16,000) "more acres in said township" than he is entitled to claim thereunder, and by "a malicious suit now seeks to cast a cloud upon the "title of others who have entered the western lands in said town-"ship * * * honestly and according to law, and who are in the "peaceable and undisturbed possession of same."

The defendant denies the allegations of slander contained in the plaintiff's petition, and assuming the character of plaintiff in reconvention he avers that he has acquired by purchase a large body of lands lying and being situated in said township twenty-two, and for which he holds patents from the State, and of which he is now and has been since the issuance of said patents in the actual and peaceable enjoyment and possession, and that notwithstanding that fact the plaintiff has wantonly and maliciously slandered his title thereto and has thereby occasioned him damages.

The prayer of his answer is in conformity with the aforesaid averments—demanding damages, the issuance and perpetuation of an injunction against the plaintiff.

The answer of the other defendants is quite similar to that of their codefendant.

In *limini litis* plaintiff's counsel filed an exception and motion to strike out a portion of the defendants' answers on the ground that the official plat of survey of G. F. Connelly, U. S. surveyor, made in 1836, and on which his patent was based, cannot be questioned or impeached by the defendant-, and this court is wholly without jurisdiction to determine whether same is or not erroneous, and that the said patent cannot be questioned or impeached by the defendants for fraud or error.

That the United States Government, as the owner of the sea marsh adjacent to the seashore and to West bay, "acquired all the alluvion "made by accretion to said lands between the years 1836 and 1850; "and when said lands were granted by the United States Govern-"ment to the State of Louisiana" same passed to the State by the granting act of Congress, and that same passed to the plaintiff as patentee thereof, and "*that he acquired all of said lands as well as the "accretions, which were added thereto, as they were at the time they were "granted by the United States to the State of Louisiana,*" said granting act passing a fee-simple title *in presenti* to the State, not only as the land was at the time of the survey by Connelly in 1836, but as it was at the date of the grant, and that the whole was acquired by the plaintiff as patentee.

His additional representation is that the plaintiff, as patentee, "acquired *all of said land* in township No. 22 south, range No. 31 "east, on the southeastern west of the river land district, *according "to the official survey of said lands in the State land office, as they were "at the time they were granted by the United States* to the State of "Louisiana."

That the patent issued to the plaintiff evidences a contract be-

tween the State and the plaintiff, and that, consequently, the State could not lawfully grant same subsequently to H. J. Leovy or other persons, or any portions thereof, "in said township," and by so doing or in attempting to do so, as the defendant Leovy contends, she has attempted to impair the obligation of her contract,
141 and to deprive him of his property without due process of law; that the patents issued to the defendant H. J. Leovy were made and issued subsequent to the issuance of patent No. 4058 to the plaintiff, and that the lands therein described are embraced in and covered by the patent of the plaintiff aforesaid, previously issued, and therefore the patents of the said defendant are illegal, null, and void, and that the State of Louisiana, in issuing said subsequent patents to the defendant Leovy, sought to impair the obligation of the contract which she had previously made and entered into with the plaintiff as represented by said patent 4058, and attempted thereby to deprive him of his property without due process of law.

Based upon the foregoing averments, the prayer of said motion is "that the portion of defendant's answer and plea in reconvention "alleging error in the official plat and survey made by G. F. Con- "nelly in 1836, or any change in the nature and character of the "marsh west of lots fronting on the right bank of the Mississippi, in "township 22 south, range 31 east, in the southeastern west of the "river land district, according to the official survey of said lands in "the State land office by accretion or otherwise; also all averments "of fraud contained in said answer and plea in reconvention, and "also all averments of defendant's setting up title to any of said "lands under patents subsequent to that of the plaintiff," be stricken out and all evidence thereof "be excluded, rejected, and disal- "lowed."

Upon this exception and motion to strike out, but which possesses many of the elements of a supplemental petition or replication to the answer and reconventional demands of the defendants, the district judge made the following ruling, viz:

(1.) That the portion of defendant's answer alleging error on the official plat and survey of Connelly in 1836, "or any change
142 "in the nature and character of the marsh west of the lots "fronting on the right bank of the Mississippi river, in town- "ship 22 south and range 31 east, &c., * * * and all the aver- "ments of fraud" contained therein, be stricken out and all evidence thereof be excluded and disallowed.

(2.) "That the defendants be allowed to show by proper evidence "that they have a better and superior title than plaintiff's to the "sections in the township claimed by them."

But in the course of his reasons for judgment the judge expressed the opinion that patents for land can only be impeached for fraud in their issuance at the seat of government; but that "the question "as to whether or not, when the plaintiff obtained his patent to this "land, there was more than the number of acres mentioned therein, "and the question of accretion, are to be decided on the merits of "the case. And so, also, is the question as to whether possession of

" part of a tract of land with a title to the whole, if any, is posses-
" sion of the whole."

To this ruling and opinion of the judge *a quo* the defendants urged objections, and a bill of exceptions was retained thereto by them.

Reduced to a last analysis, the pleadings present for our consideration and decision a purely petitory action, in which the defendant holds the affirmative side of the controversy and is bound to succeed on the strength of his own title, and in deciding the question of title we are to determine whether the patents which the State issued to H. J. Leovy, in 1893, reflect a title which is superior and paramount to the patent which the State issued to the plaintiff in 1890, to the extent that they conflict.

This controversy is not so much with regard to the character or strength of the respective parties as it is with regard to the
143 area or domain which the State actually and really conveyed to the plaintiff; for it is quite true and cannot be denied that the State was wholly without power to convey to the defendant H. J. Leovy any land in 1893 which she had previously sold to the plaintiff in 1890, without trenching upon the issues of error or fraud which were excluded from consideration. In other words, we are to determine from the evidence before us whether the plaintiff's patent covers and includes *all the land* in township twenty-two south, of range thirty-one east, in the southeastern land district west of the Mississippi river; for if it does in fact, the patents which were subsequently issued to the defendant H. J. Leovy do not reflect a paramount title thereto.

But in so deciding we are at liberty to examine and determine whether there was a greater number acres of land than are described in the plaintiff's patent, and the question of accretion also.

The judge below prepared an elaborate and very well considered written opinion on the merits, in which his views are well stated and upon which his judgment in favor of the plaintiff is founded, and from which the defendants appealed.

A fair analysis of his opinion is to the effect that the Connelly survey in 1836 extended only to the lots of land which are therein designated as fronting on the Mississippi river, and did not embrace any part of the sea marsh adjacent thereto, and that the evidence clearly shows that the sea marsh has never been since that date surveyed by any one.

That the official plat of the Connelly survey merely locates the township and exhibits its two corners and the area of the front lots, but that it does not show that either the township or the section lines thereof were traced or established in any way.

144 That it is an irrefutable fact that the land which was patented to White was never surveyed, and that there can be no official plat of the survey of unsurveyed land; that in consequence of the sea marsh in question never having been surveyed the phrase in the patent of the plaintiff, to wit, "according to the official plat of the survey of said land in the State land office," was meaningless, and consequently the statement in the patent "con-

taining 3,840 acres" only meant that the *supposed* area of the sea marsh was estimated to contain that quantity of land.

The opinion then declares that the evidence does not show that the plaintiff acquired a greater quantity of land than his patent calls for; that nearly the whole township is cut up by innumerable bayous, passes, and a few navigable streams.

The following extract from the opinion states the judge's conclusions very ters-ly, viz:

"White testifies on page 10: 'It is a partial township; has 12,000 or 15,000 acres in area, nine-tenths being water.' His testimony stands uncontradicted. But if White has acquired more land than he paid for, the State, yes, even the sovereign, under due form of government could not deprive him of that excess without due process of law. Whoever by virtue of a public position under a State government deprives another of his property without due process of law violates the constitutional inhibition and his act is that of the State.

"White did not purchase by sections, and the excess, if any, has never been established by any authorized survey. How, then, could the State lawfully convey by patent to defendant sections in a township whose sectional lines were never run, and which lands in said township had previously been sold to plaintiff?

"In the sale of public lands the Government and its pur-
145 chasers are governed by the same principles which apply to individual vendors and vendees.

"The State should have first sued White for the supplement of the price.

"The State alone could do so, as in the Buck case, but a second patentee cannot be vested with that power. If there exists an extent of more than what is specified in the contract the buyer has a right either to give the supplement of the price or to recede from the contract.

R. C. C., 2493.

"In all cases where the buyer has a right to recede from the contract, the seller is bound to make him restitution not only of the price, but also of the expenses occasioned by the contract.

R. C. C., 2497.

"The evidence shows that Leovy obtained patents for sections and fractional sections in T. 22 S., R. 31 E., covered by plaintiff's patent issued three years previously.

"A second patentee cannot be heard to impeach the prior patent for any fraud committed by the grantee against the State or any mistake committed by its officers acting within the scope of their authority.

"Counsel for defendant strenuously contend that White's title is entirely null and void on its face, because every statute of the Louisiana legislature requires that public land be sold by sections and fractional sections with a specified number of acres in each section.

Brief, page 22.

"Reference to act 75 of 1880, entitled An act to readjust the State land office, etc, makes it clear to my mind that counsel are in error. Sec. 11 reads as follows:

"'That the public lands donated by Congress to the State of
146 Louisiana, designated as sea marsh or prairie * * * shall be subject to entry and sale at the rate of 12½ cents per acre.'

"'SECTION 3. That it shall be the duty of the register to keep accounts of the sales of land donated to the State in well-bound books * * * setting forth the sections, townships and range, district and parish, to whom and when sold and for what price.'

"White purchased under this act. He bought all the unsurveyed marsh in T. 22 S., R. 31 east, except sec. 16. He purchased in good faith from the State, the sovereign, through its duly accredited representatives. If the sections above quoted, upon which counsel for defendants rely, require or exact the register to sell public lands of this nature by sections or fractions of sections, I am of the opinion that the sale to White could be annulled only by the State in a direct action, and that it cannot be attacked collaterally. Defendant is not vested with the power of the State in this respect.

"Furthermore, in the Buck case, whose patent counsel for defendants allege was identically the same as the patent in this case (Brief, page 5), the supreme court declared that Buck's title to the land conveyed in his patent was good. His purchase was not by sections. I desire to reiterate that the evidence shows most positively and conclusively that the sectional lines of this township have never been run, nor have any sections or fractions of sections been surveyed, so as to locate them by any official survey.

"The evidence shows that White was in actual possession of the land covered by his patent. Actual possession of a part is actual possession of the whole.

"The patent appears to me clear, absolute, and unmistakable in terms. It is plain and unambiguous in language and evident in meaning.

"Viewed in connection with the receipt of the register,
147 which shows that White paid $534 for the entry of all the unsurveyed sea marsh in this township, and the evidence adduced on the trial of this case, it cannot admit of any other construction. Any other interpretation would be to destroy its purpose and object.

"I have gone over this case very thoroughly and made a careful analysis of authority on the issues involved herein. I appreciate the importance of this case, and after a careful examination of the question in all its bearings I have reached the conclusion that plaintiff's title to the land described in his petition is good, perfect, and complete, and that he should be maintained and quieted in his possession thereof.

"For the reasons herein assigned, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff and against defendant, decreeing that they and each of them have slandered plaintiff's title to the land described in plaintiff's petition, to wit, all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi river, except sec. 16, in township 22 south, range

No. 31, extending in the southeastern west of river land district, containing 3,840 acres, and that plaintiff be maintained and quieted in his possession thereof.

"It is further ordered, adjudged, and decreed that the writ of injunction herein issued at plaintiff's instance be maintained and perpetuated, and that the reconventional demand of defendants be rejected and the injunction issued at the instance of Henry J. Leovy be dismissed with costs."

Recurring to the evidence in the record and the maps, plans, diagrams, field-notes, etc., appended thereto and brought up in the original, we find the following *data* pertinent to the issues formulated *supra*:

The first one which attracts attention is the character of
148 receipt which the register gave to R. M. White for the money he paid for the land in question, and which is of the following tenor, viz:

"BATON ROUGE, *August 27th*, 1890.

"Received of R. M. White, Esq., the sum of $534.00 for the entry "of all the unsurveyed sea marsh in T. 22 S., R. 31 E., southeastern "district, west of the Mississippi river. This matter to be submitted "to the attorney general of the State, and if, in his opinion, said land "can be entered, then patent is to issue to him; otherwise the money "is to be refunded to him."

Inasmuch as the plaintiff's patent No. 4058 bears date of issuance the 10th of November, 1890, and states that the patentee purchased with certificate No. 2251, N. S. L., of same date, it is evident that ample time for consideration was taken, for the purpose, doubtless, of obtaining the advice of the attorney general; and the strong likelihood is that in issuing patent 4058 the register conformed his action to that advice; and, while it undoubtedly does appear from said receipt that the plaintiff had made an application to purchase *all* the unsurveyed sea marsh in township twenty-two aforesaid, we are to consider whether or not there are other recitals in the patent which in any way modify or limit the extent of the purchase which he really and actually made.

There is a fact disclosed by the receipt and patent 4058, when considered together, which conclusively shows that during the interval which occurred between the two dates a change had taken place with reference to the entry, and that fact is that, notwithstanding White contemplated at the time of depositing the money with the register the purchase of *all* the unsurveyed marsh in the aforesaid township for the round sum and price of $534, he actually bought *3,840 acres* presumably for 12½ cents per acre, which aggregated only $480.00.

149 An examination of the various documents, plans, and maps which were brought up in the original show the following facts and *data*:

The certified copy of the approved list No. 1, exhibiting the area of swamp lands which was granted by Congress to the State in 1849 and 1850—which is authenticated by the certificate of the Commis-

sioner of the General Land Office, at Washington—shows identically the same description of the sea marsh in township twenty-two aforesaid as that given in patent of the plaintiff, 4058.

The field notes of the survey which was made by G. F. Connelly, deputy U. S. surveyor, which included the township twenty-two aforesaid, show that same was made in March, 1836, and approved by Surveyor General Williams on June 27th, 1836. An exemplification from the map of said survey shows that the aforesaid field-notes were examined and approved by the surveyor general, Newcomb, on December 8th, 1842, and were filed in the General Land Office, at Washington, on June 11th, 1843.

That map as well as the field-notes show that the area of land actually surveyed was only a narrow strip which fronted on the Mississippi river and extended back to a marsh in the rear, and that notwithstanding they are therein mentioned as sections, one to thirty-six, inclusive, same are small lots of irregular shape and dimensions and only containing from two to thirty-six acres each, and equal only to $525\frac{7}{100}$ acres in all.

A sketch of said township and other lands made by William Bedford, deputy surveyor, in 1892, shows that the strip of land which Connelly surveyed in 1836 commences in section one and traverses diagonally sections 1, 12, 13, 24, 25, and 36.

A certified extract from the map of Connelly's survey, which was made by Lanier, register, on June 2nd, 1893, has thereupon traced, immediately in front of the portion representing the front or
150 surveyed lots, and extending the full length thereof, the following indorsement, viz:

"Marsh.
"Certificate number 2251, N. S. L.
"Robert M. White, pat. 4058, vol. 27, page 33."

And there is also indicated upon that extract, at a short distance from said lots, by a heavy red line, which is traced somewhat irregularly from north to south, what appears to be the area of the space representing the "marsh" which the plaintiff acquired under patent 4058, and which he purchased or located with "certificate number 2251, N. S. L.;" and beyond that line, to the west, is written in large letters the words "*West bay.*"

A certified extract from the Connelly map, which was made in the office of the surveyor general on July 20th, 1883, exhibits the same condition of things, but without the aforesaid indorsements.

Prior to the date of the making of either of those extracts from the map of Connelly's survey, the defendant H. J. Leovy made the following locations or purchases of lands in the aforesaid township, and patents therefor were issued to him:

On May 1st, 1893,	patent	4868,	sections 4 and 5	1,280 acres.
Do. 3rd,	do.	4871,	do. 6	640 do.
Do.	do.	4872,	W. ½ sec. 9.....	320 do.
Do.	do.	4873,	E. ½ sec. 8	320 do.
Do.	do.	4874,	E. ½ sec. 17	320 do.
Do.	do.	4875,	E. ½ sec. 20	320 do.
Do.	do.	4876,	E. ½ sec. 29	320 do.

It will be observed by comparing the foregoing list with the maps of the Connelly survey that section six (6) is the extreme northwestern section in the aforesaid township twenty-two (22), and that sections five (5), eight (8), seventeen (17), twenty (20), and twenty-
151 nine (29) extend from the northern boundary line of the township due south, each one immediately above the other, and that sections four (4) and nine (9) immediately adjoin the head of the column on the east.

A glance at the township map discloses the fact to be that there is an intervening space of more than two miles square between the upper limit of the Connelly survey and the eastern boundary line of section four (4), and an intervening space of more than three miles square between the entire eastern limit of sections eight (8), seventeen (17), twenty (20), and twenty-nine (29) and the western limit of the Connelly survey.

It further discloses that the sea marsh and West bay, as same are thereon delineated, intervene between those two boundaries.

On the day previous to the preparation of the aforesaid extract, which the register caused to be prepared from the map of the Connelly survey, the defendant H. J. Leovy made the following locations or purchases of lands in the aforesaid township, and patents therefor were issued to him:

On June 1st, 1893,	patent	4924, east ½ of sec.	9, 320 acres.
Do.	do.	4925, S. W. ¼, sec.	10, 100 do.
Do.	do.	4926, west ½, sec.	15, 220 do.
Do.	do.	4927, E. ½ N. W. ¼.	
Do.	do.	do. W. ½ of N. E. ¼, and	
Do.	do.	do. W. ½ of S. E. ¼, sec.	22, 240 do.
Do.	do.	4928, east ½ of sec.	27, 320 do.
Do.	do.	4929, N. E. ¼, sec.	34, 160 do.

We find from the foregoing that H. J. Leovy entered or purchased with certificates lands in the aforesaid township twenty-two (22) five thousand and forty (5,040) acres, the whole of which
152 constitute the tier of sections which immediately adjoins the one last above described, and is two miles square west of that portion of said township which is embraced in the Connelly survey.

There is annexed to the record a certified copy of a map of a survey made of the aforesaid township twenty-two (22), which was by Charles Lewis, deputy U. S. surveyor, in October, 1893—three months *subsequent* to the date of Leovy's patents—at the request of R. M. White, the plaintiff, and we make the following extract from the certificate which is thereto appended, viz:

"The township has an approximate area of 960 *acres* of *land*, ex-
"clusive of a small margin on the lots from one (1) to thirty-five
"(35) on the river, and the balance consists of *marsh* and lagoons
"unfit for any use."

To the foregoing is appended the following statement, which serves to characterize said survey, viz:

"I found evidences of possession by R. M. White under his
"patent, in sections 4, 5, 6, 8, 9, along Mercantile, Tiger, Williams,
"Main, and Hingle passes * * * and by interrogating the em-

"ployees of White (ascertained) that his agents and employees "have been in possession since 1890."

All the foregoing passes are traced upon said map, but they do not appear upon any other of the maps in the record.

This map bears no evidence of same having been made contradictorily with either of the defendants, and an *ex parte* survey is not a recognized mode of making proof of possession of real estate, notwithstanding the register's certificate shows that said map was deposited in his office by R. M. White on February, 1896.

Making a comparison between this map and the patents of H. J. Leovy, it appears that sections four (4), seven (7), ten (10), fifteen (15), twenty-two (22), twenty-seven (27), and thirty-four (34) are
153 intersected by Williams pass; that sections four (4), five (5), eight (8), nine (9), seventeen (17), twenty (20), and twenty-nine (29) are intersected by Main pass; that only section six (6) alone is intersected by Tiger pass.

All of this latter series of sections were purchased by H. J. Leovy in May, 1893, and all those in the former series of sections were purchased by him in June, 1893.

To the aforesaid map of Lewis, surveyor, is appended field-notes from which we glean the following summary of the plaintiff's claims and the apparent conflict between them and the patents of H. J. Leovy, viz:

Plaintiff claims		505	acres in section	4;	defendants	all.
Do.	do.	301	do.	5;	do.	do.
Do.	do.	420	do.	6;	do.	do.
Do.	do.	169	do.	8;	do.	E. ½.
Do.	do.	198	do.	9;	do.	all.
Do.	do.	70	do.	10;		S. W. ¼.
Do.	do.	209	do.	15;		W. ½.
Do.	do.	277	do.	17;		E. ½.
Do.	do.	209	do.	20;		E. ½.
Do.	do.	287	do.	22;		240 acres.
Do.	do.	218	do.	27;		E. ½.
Do.	do.	212	do.	29;		E. ½.
Do.	do.	66	do.	34;		N. E. ¼.

Judging from the recitals contained in the field-notes accompanying the Lewis survey, they represent the lands which are *above overflow*, no portion of which is sea marsh.

The total amount of land thus situated which the plaintiff claims, taking the Lewis map and field-notes as our guide, is 2,427 acres, and to this extent alone is an apparent conflict.

But as his patent No. 4058 calls for 3,840 acres he evi-
154 dently relies upon the remainder of the aforesaid township to make out the balance of 1,413 acres, and this is found in other sections of said township which do not in any way interfere with the defendants.

But the certificate and *procès verbal* of the Lewis survey show that there was, in October, 1893, when it was made, a margin of land along the front of the lots which are embraced in the aforesaid Connelly survey, which was above tidal overflow and not included

therein, as will appear from the extract we have made therefrom, *supra*.

The introduction in evidence of this map and the field-notes which were undoubtedly made by Lewis at the request of the plaintiff several months subsequent to the issuance of patents to Leovy for five thousand and twenty acres in said township twenty-two would clearly indicate that the plaintiff restricts his claim to the number of acres called for by his patent, and same appears to be inconsistent with any other reasonable conclusion.

And the further inference seems equally clear that by the map and field-notes of the Lewis survey the sea marsh, which is indicated on all the maps of the Connelly survey, was excluded therefrom *ex industria* as well as the strip of adjacent high land adjacent to the surveyed lots fronting the Mississippi river, and this notwithstanding the fact that the plaintiff's patent and petition call for "all the unsurveyed sea marsh west of lots fronting on the right bank of the Mississippi river."

There is another patent which is annexed to the record and filed for the first time in this court as part thereof which shows that the plaintiff, R. M. White, purchased from the State "the east half of "the northeast quarter of section No. nineteen (19), in township No. "twenty-two (22) south, range No. thirty-one (31) east, in the south-
"eastern west of the river land district, parish of Plaquemines,
155 "containing eighty acres, according to the official plat of the
"survey of said lands in the State land office," and this patent bears date of issuance March 12th, 1896, that date occurring during the pendency of this suit which was filed on the 7th of July, 1893, and decided on the 24th of March, 1897.

This patent has its importance in determining the issues in this case, as it is identical in character of recitals with the patents which had been issued to the defendant H. J. Leovy three years previously, and for the far greater reason that section nineteen, of which plaintiff thus purchased a part, is in the aforesaid township twenty-two, and the land he purchased is only one-half a square mile distant from the land which the defendant H. J. Leovy purchased from the State on May 3rd, 1893, under patent No. 4875, in section twenty thereof.

It appears from the *parol* evidence that the attention of R. M. White was attracted to the aforesaid entry while he was on the stand as a witness, but it was then objected to by his counsel, and the objection was sustained.

In the testimony of Welman Beadford, who made one of the surveys of the aforesaid township twenty-two, we find this statement, viz:

"That in 1889 I made a superficial examination and survey of "the passes at the instance of the estate of the late Captain James "B. Eads."

He says he went over this township again in 1892 and 1893 at the instance of the defendant H. J. Leovy and is familiar with the character of the land, and he then furnishes the following description thereof, viz:

"The front lots on the river are dry land for a distance of a few "chains back from the river; *west of that there is a strip of sea marsh* "*of several miles* in width. In length, as well as in width,
156 "*beyond this* are bayous and outlets from the Mississippi "river, *each* side of which is dry land, varying in depth from "one chain and more—that is to say, varying in depth from sixty "to one hundred feet, with marsh intervening."

That witness states, from an examination of the Connelly map, that the distance from the northern end of the surveyed lots to the sea marsh is one-quarter of a mile; that in the center of the township aforesaid it is one mile, and at the southern end it is one and one-half miles. He also states that there is a strip of high land lying west of the western limit of the sea marsh, which is delineated on the Connelly map, and east of Williams pass of a mile and one-half in width.

He states that the upper boundary line of township twenty-two is about four miles below the Jump. The foregoing testimony is supplemented by that of H. J. Leovy of similar purport. Most of the parole evidence chiefly relates to the question of possession *pro* and *con*, and in our opinion can exercise no influence over the question of title.

Applying the foregoing facts to the respective controversies of the litigants, what is the just and legal conclusion to be drawn therefrom?

Plaintiff's contention is that he acquired by his patent 4058 not only all the unsurveyed sea marsh in the aforesaid township twenty-two, but in his petition he specifies the quantity as three thousand eight hundred and forty (3,840) acres, "according to the official plat of survey in the State land office."

His petition and prayer for injunction sought to restrain the defendants from entering upon any part of the unsurveyed sea marsh in said township, and same was accordingly granted and made perpetual by the court below, and if its judgment is affirmed
157 one of the effects thereof will be to exclude defendants therefrom.

Not only so, but he also makes a distinct claim to *all the lands* in said township which has been added thereto by accretion since the date of Connelly's survey, in 1836, those alluvial deposits having passed to the State of Louisiana by the granting act of Congress, and to him by his patent, the whole having been embraced in the Connelly survey prior to the formation of said alluvion.

Per contra, the contentions of defendants are that under patent 4058 the defendant only acquired the unsurveyed sea marsh which was adjacent to the tier of lots fronting on the Mississippi river which were surveyed by Connelly in 1836, and that his purchase was made in accordance with that survey, and only embraced a strip of less than two miles in width, which was then situated between those surveyed lots and West bay.

That within a few years subsequent to the Connelly survey there occurred a crevasse in the west bank of the Mississippi river, at a place called the Jump, some four miles above the northern end of

the surveyed lots, and that the accumulations which were thereby occasioned on the seaward side thereof gradually raised the bed of West bay, so that the whole of it became sea marsh, which in turn became connected with large bodies of swamp land to the westward thereof.

The defendants affirm that there is of this character of sea marsh in West bay and in the swamp lands thereto adjacent and within the aforesaid township more than sixteen thousand acres, the whole of which the plaintiff seeks to cover with his patent 4058, notwithstanding it calls for only thirty-eight hundred and forty (3,840) acres of "*unsurveyed sea marsh*, according to the official plat of survey in the State land office."

That under the plaintiff's patent calling for "all the un-
158 "surveyed marsh west of lots fronting on the right bank of "the Mississippi river, except section sixteen, in township "twenty-two," he makes claim to the whole of the sea marsh which has been formed in West bay since 1836 by means of alluvial deposits, and also to the swamp lands connected therewith on the westward side of the township; and inasmuch as the entries or purchases which the defendant H. J. Leovy made in 1893 were of those swamp lands, the present conflict of title has arisen between the respective claimants.

It thus becomes apparent that the only defendant who has any real and actual interest in the controversy is H. J. Leovy, and that he makes no claim beyond the eastern limits of the several sections in which he made selections.

The question for decision, therefore, is whether the plaintiff acquired, under his patent 4058, all the swamp lands in the western part of said township, his contention being that the whole of said township was sea marsh in 1836, when the Connelly survey was made, and that all subsequent accretions thereto passed to the State by the granting act of Congress, and to him by his patent, and the contention of the defendant is that these accretions passed from the Government to the State, but not from the State to the plaintiff, as patentee.

The district judge refers in his opinion to the recital in plaintiff's patent 4058 to the effect that it purports to convey "all the unsurveyed marsh west of the lots fronting on the right bank of the Mississippi river," and remarks "that White did not purchase by sections, and the excess, if any, has never been established by any authorized survey." He then refers to the testimony of White to the effect that while said township has twelve or fifteen thousand acres in area, near nine-tenths thereof is water, and then asks the
question, "How, then, could the State lawfully convey by
159 patent to defendants sections in a township whose sectional lines were never run, and which lands in said township had been previously sold to the plaintiff?"

Manifestly, the district judge, in thus deciding, accepted the plaintiff's theory that the term "all the unsurveyed marsh" included the whole area of said township west of the surveyed lots, high lands as well as sea marsh, and it is equally manifest that in

thus deciding the judge wholly disregarded the further and additional recital of the patent to the effect that the area conveyed was only "thirty-eight hundred and forty acres, according to the official plat of the survey of said lands in the State land office."

The judge *a quo* puts his opinion on the ground that neither the field-notes of Connelly's survey nor any other evidence shows that either the township or section lines had been actually run or the entire superficial area surveyed, and concludes that there cannot be an official plat of unsurveyed land, and the aforesaid phrase is altogether without significance, and that the number of acres mentioned in the patent is only an estimate of the aforesaid area.

A review of some of the foregoing facts will serve to characterize the plaintiff's acquisition under his patent 4058.

The first which attracts attention at the outset is the character of the receipt which the register gave to the plaintiff for the sum of $534.00, and which sum he deposited with the register for the purchase of swamp lands.

The significant facts disclosed by that receipt are (1) that it bears date August 27th, 1890, near three months prior to the issuance of patent 4058, and that the delay was evidently occasioned by the necessity of the register's obtaining the advice of the attorney general relative to the plaintiff's application; (2) that while
160 White had applied for the entry of "all the unsurveyed sea marsh in township twenty-two," the patent actually conveyed to him "all the unsurveyed marsh west of lots fronting on the right "bank of the Mississippi river, excepting section sixteen, in town- "ship twenty-two, * * * containing thirty-eight hundred and "forty acres, according to the official plat of survey of said lands in "the State land office;" (3) that whereas White deposited $534.00 in cash with the register, as the amount presumably necessary for the consummation of the purchase he proposed, he actually employed certificate No. 2251, N. S. L., in making the purchase of 3,840 acres of sea marsh, presumably at twelve and one-half cents per acre, aggregating $480.00 only.

The approved list of the swamp lands which were granted by Congress to the State on file in the General Land Office, at Washington, contains quite a similar description of the sea marsh in said township as that contained in patent 4058.

The field-notes of Connelly's survey were made and approved by the surveyor general in June, 1836, and same were again examined, verified, and approved on December 8th, 1842.

Upon a certified sketch from the official map of the Connelly survey, which the register of the State land office made on June 2nd, 1893, about the date of Leovy's purchase, is traced, immediately in front of the portion representing the front lots and extending the full length thereof, the following indorsements, viz:

"Marsh.
"Certificate number 2251, N. S. L.
"Robert M. White, patent 4058, vol. 27, page 33."

There is also indicated upon that extract, at a short distance to

the westward of said lots, by a heavy red line which is traced somewhat irregularly from north to south, what appears to
161 be the area of the space representing the "marsh," which the plaintiff acquired under patent 4058, and in purchasing or locating which he used certificate No. 2251, N. S. L., and beyond that line is traced, with equal distinctness, the space indicated as *West bay*, accompanied by those words.

Objection was made by the plaintiff's counsel to the introduction in evidence of that extract on the ground that the red line thereon traced is not found upon the original map of the Connelly survey, but no objection was urged against the endorsement thereon.

Nevertheless, the parol evidence of Surveyor Bedford sufficiently explains the precise situation as it was in 1889, just prior to White's purchase, and shows that there was immediately west of the surveyed lots on the Mississippi river a strip of sea marsh of several miles in width, and that beyond this are bayous and outlets from the Mississippi, on each side of which is dry land varying in width of from sixty to one hundred feet.

And the map and field-notes of the survey which White caused Surveyor Lewis to make in October, 1893, fully confirms the statement. Consequently, we may with safety accept the extract which the register made and furnished as having been made in conformity with official *data*.

But, accepting the field-notes of the Lewis survey as a fair statement of the plaintiff's claim, it tends to establish his title to about three thousand acres of land which were above overflow in 1893, consisting in no part of sea marsh, and it is notic-able that it is this claim which comes in conflict with that of the defendant Leovy; and the *procès verbal* further shows that there was at that time a margin of high land along the front of the lots which Connelly surveyed and above tidal overflow, the area of which
162 is not specified in the field-notes of said survey, because same was expressly excepted therefrom, and it is not, in our opinion, easy to reconcile that exception with the recital of the patent 4058 to the effect that White acquired "all the marsh west of lots fronting on the right bank of the Mississippi river in township twenty-two." It seems inconsistent that White should have excluded that strip of high land and set up a claim to land similarly situated, but three miles farther west, particularly in view of the fact that his claim to the former was as strong, if not stronger, than to the latter.

But the field-notes and map of the Lewis survey very clearly indicate that the plaintiff is now urging a claim to specific number of acres of high land as being those called for by his patent and not for all the unsurveyed sea marsh west of the surveyed lots fronting on the Mississippi river.

It further appears from said map and field-notes that, on the contrary, "all the unsurveyed sea marsh" which is indicated on all the other maps, and particularly that of the Connelly survey, was excluded therefrom *ex industria*, but that same conspicuously portray all the passes, bayous, and outlets in the western part of said

township, in the vicinity of which the defendants' purchases were made and to which the plaintiff makes claim.

These various claims and contentions are contradictory and conflicting in themselves, as well as the maps, plans, profiles, and parol evidence which were intended to explain them; yet there is still another piece of documentary evidence—one which has been already adverted to—which, in our opinion, shows most clearly that the plaintiff does not feel any confidence in his claim to *all* the sea marsh or *all* the high land in the aforesaid township under his patent 4058, and that is the patent which was issued to him
163 by the register of the land office on the 12th of March, 1896, to a portion of section nineteen of the aforesaid township twenty-two during the pendency of this suit.

That patent covers land which immediately adjoins that which H. J. Leovy purchased. It is identical with the patents which were issued to Leovy in the character of its recitals, concluding as it does with the phrase, viz: "Containing eighty acres, according to the "official plat of the survey of said lands in the State land office."

It only remains for us to apply the law to the foregoing state of facts.

In our opinion it is a proposition which is too well recognized to require the citation of authority that when several litigants trace their titles to land through a common author neither of them will be heard to gainsay or disavow the title of that author. In this case we find appropriate occasion to apply that rule, inasmuch as both the plaintiff and the defendants allege an ownership based upon patents issued by the State of Louisiana. It is therefore clear that neither party will be heard to deny that the State became the owner of the aforesaid township twenty-two by virtue of the grant of the United States Government of 1849 and 1850. It is therefore unnecessary for us to investigate and determine whether there had been a formal and complete survey of said area by running out the township and section lines thereof or not as an incident of said grant. It is equally true that it is of no avail for the plaintiff to attempt to defeat the defendants' title by showing the want of such a survey for the reason that the patent 4058 of the plaintiff, as well as all of the patents of the defendant Leovy, in terms recite that they were all issued "according to the official plat of the survey of said lands in the State land office," and for the further reason that the
164 plaintiff has procured a similar patent for part of the land in said township during the pendency of this suit.

Under these circumstances we deem it our duty to accept the recitals of the patents of both parties as furnishing proof that a *sufficient* survey was actually made of the aforesaid township to found a title in the State under the congressional grant, and to enable the register of the land office to sell any portion thereof according to the official plat which was on file in his office.

We think *it* we may fairly assume, from the evidence to which we have adverted, that the register acted on the advice of the attorney general in making the sale to White and in issuing to him the patent he did; and we also think that the evidence clearly shows

that the register believed he had a legal right to issue the patents he gave to the defendant in 1893, and that in so doing he acted upon the hypothesis that the plaintiff's patent embraced a portion of the sea marsh which fronted the surveyed lots on the Mississippi river on the east and West bay on the west, and did not extend to or cover the high lands on the passes in the western portion of said township twenty-two.

Counsel for the defendants have cited and greatly rely upon the opinion of this court in State *vs.* Buck and Fruit Company, 46 A., 656, as controlling our decision of this case; but counsel for plaintiff insist that there is a material difference between the patents which figure in the two cases, and for that reason the questions at issue are not germane, and that decision consequently not controlling.

That suit was an action of precisely similar character to the instant one, the State of Louisiana, as plaintiff, alleging the slander of her title under the aforesaid congressional grant by the defendants, and they in turn justifying their title under a patent
165 from the State and claiming thereunder a large extent of territory by virtue of alluvial deposits or accretion.

The defendants set up title as having been derived from Robert M. White, who is the plaintiff in this suit, and he in turn claimed to have derived title from C. C. Packard, who obtained a patent therefor in 1869.

For the purpose of making a more accurate illustration and application of our decision in that case to this controversy, we reproduce the two patents which are involved, viz:

"*Copy of Patent to R. M. White in This Case.*

THE STATE OF (SEAL) *of* LOUISIANA:

Patent No. 4058.

To all to whom these presents shall come, Greeting:

Whereas R. M. White, of the parish of Plaquemines, in the State of Louisiana, purchased, per certificate No. 2251, N. S. L., November 10th, 1890, all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi, except section No. sixteen, in township No. twenty-two south, range No. thirty-one east, in the southeastern west of river land district, *containing* 3,840 acres, *according to the official plat* of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold, and by these presents does give, grant, and sell, unto the said R. M. White and to his heirs the *above-described* land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said R. M. White and to his heirs and assigns forever.

In testimony whereof, etc.

Copy of Patent in Case of State vs. P. T. Fruit Co., 46 An., p. 657.

THE STATE OF LOUISIANA:

Patent No. 526.

166 To all to whom these presents shall come, Greeting:

Whereas C. C. Packard, of the parish of Orleans, in the State of Louisiana, purchased, per warrant No. 380, N. S. D., dated September 29th, 1869, the following-described swamp land, subject to tidal overflow, to wit: All the unsurveyed sea marsh in township 21 S., ranges 30 and 31 E., in the southeastern land district of La., west of the Miss. river, excepting lots fronting on the river, and sections 16 in both ranges, *containing* 1,320 (acres), extending back to West bay, *according to the official plat* of the survey of said lands in the State land office:

Now, know ye that the State of Louisiana, in the consideration of the premises and in conformity with law in such cases made and provided, has given, granted, and sold, and by these presents doth give, grant, and sell, unto the said C. C. Packard and to his heirs the *above-described* land; to have and to hold the same, together with all the rights, titles, and privileges thereunto belonging, unto the said C. C. Packard and to his heirs and assigns forever."

We also reproduce an exemplication of the map of the Connelly survey of the aforesaid township twenty-two, which adjoins that in which the Buck purchase was made, viz:

(Here follows map marked p. 167.)

167 A comparison made between the two patents show- them to be practically identical, the only material difference be-
168 tween them being the words "extending back to West bay," that phrase having been omitted from patent 4058, to White; but the map shows that the *locus in quo* is very much the same.

One of the principal questions decided in the Buck case was that the sale to Buck was not one *per aversionem*, but one by measure; and upon the determination of that question depended the claim of the defendants to alluvial accretions which had formed in West bay, aggregating about thirty thousand acres in area.

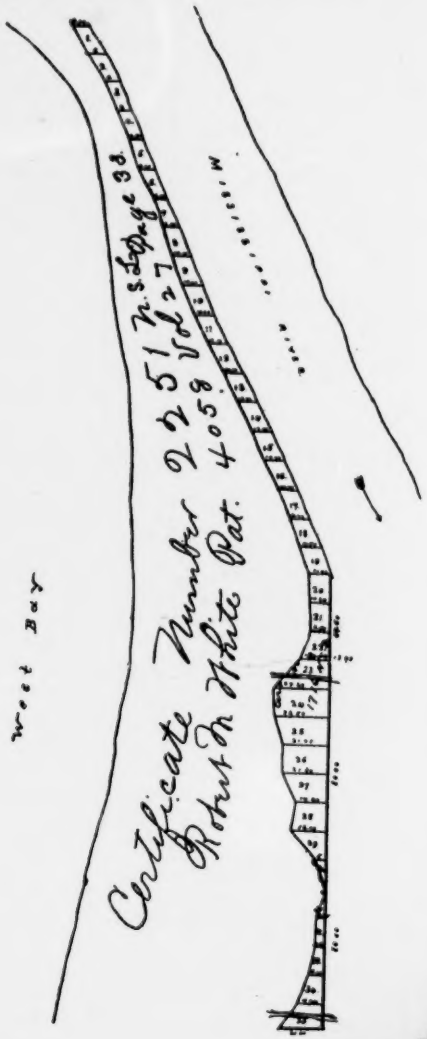
On that question we said in the Buck case:

"It certainly cannot be said that the boundaries given were, in "any proper sense, certain limits, definitely fixed. The patent "issued to Packard did not convey all the land between two adjoin- "ing tenements; and it is of no consequence that reference is had "to the township and ranges in which the land is situated, because "they are mathematically fixed, established, and well-known limits. "The sale was made of all the unsurveyed sea marsh in township "twenty-one south, with certain exceptions, containing thirteen "hundred and twenty (1,320) acres, and which, according to the

T. 22 - R. 31 E.

South Eastern District Land.

10654



Swamp lands bounded by green lines.

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Sec.	Area	Sec.	Area	Sec.	Area	Sec.	Area
1	10.92	10	13.81	19	14.97	28	22.69
2	9.57	11	13.81	20	14.60	29	15.96
3	8.97	12	13.81	21	13.62	30	3.50
4	9.32	13	13.86	22	18.10	31	2.14
5	10.00	14	13.86	23	22.27	32	5.37
6	12.00	15	13.70	24	26.90	33	8.52
7	12.00	16	13.70	25	33.77	34	13.59
8	12.42	17	14.31	26	29.69	35	23.12
9	13.81	18	15.41	27	24.96		

Surveyed in 1855 by C. P. Connelly

Surveyor General's Office
Donaldsonville La. May 1st 1858
The above is a correct extract from an approved map on file in this office
(Signed) R. W. Boyd
Surveyor General La.

I, John S. Lanier, Register of the State Land Office, do hereby certify the above to be a true and correct copy of an official map now on file in this office.
Witness my official signature and seal of office, at Baton Rouge, La, this Nov. 16th 1896.

John S. Lanier
Register

"official plat in the Land Office, extended back to West bay, *as it* "*once existed.*

"This is evidently a sale by measure. Considering the fact that "it was a sale or entry of public land—property of the State of "Louisiana—made by a public official in pursuance of special laws "governing their alienation, how could it be a sale *per aversionem?*

"*But the register sold thirteen hundred and twenty acres of land,* at "twenty-five cents per acre, *and that is the quantity the patent con-* "*veyed to Packard, and no more. Consequently, the claims of defend-* "*ants must be restricted to the calls of the patent,* unless they have been "extended or increased by accretion." (Our italics.)

In treating the question of Buck's title to the accretion
169 which had been formed on the front of the land he purchased from the State under patent 526, which was issued in 1869 to Packard, we made quite an elaborate statement of the evidence, which need not be repeated here, but we regard it quite pertinent to this case to state the conclusions which we deduced therefrom. They are as follows, viz:

"Taking the testimony of this witness"—E. L. Corthell—"as our "guide, and we think it but fair that we should do so, it appears "evident that the alluvial deposits he describes gave greatest ele- "vation to the lands in question during the series of years *imme-* "*diately succeeding 1836,* the year during which the crevasse oc- "curred, and consequently there must have been a large area of "land raised above inundation, as well as tidal overflow, at date "patent issued to Packard, in 1869—more than thirty years subse- "quently.

"The precise condition of things existing at date of issuing patent "is not clearly ascertainable from the evidence, but it is quite ap- "parent that such elevated area *must have extended much beyond the* "*limits of the tract it conveyed to Packard, taking the surveyed lots on* "*the river front as the initial point of calculation.* (Our italics.)

"And, presumably, the register of the land office was aware of the "status of the sea marsh in that locality and issued his warrant of "location, as well as the patent, conformably thereto.

"Accepting this as the true situation of the land conveyed by the "patent, *it is quite manifest that it did not constitute a riparious estate* "*in the sense of the civil law, to which the described accretions at-* "*tached*"—citing the authorities.

Applying the principles of that decision to the instant case, they seem to our minds to have a stronger application to this case in two particulars, (1) that if a sale of public lands, as all the
170 unsurveyed sea marsh in a given township which extended back to West bay, was a sale by measure of the specified number of acres, a sale of all the unsurveyed sea marsh in a township *without any western boundary* must be likewise a sale by *measure of a specified number of acres also;* (2) that if the formation of accretion by alluvial deposits made in West bay was so great antecedent to 1869 as to have defeated the claim of Packard and his assignees thereto, for so much the greater reason must we hold that White has no claim to accretion under his patent 4058, which was issued

in 1890, twenty years subsequently to the issuance of Packard's patent.

There is one point which particularly impresses our minds as it did in the Buck case, and that is the definite boundary on the *east* of the land sold which each of the said two patents establishes and from which the specified measure must be taken.

In the Packard patent the recital is, viz:

"All the unsurveyed sea marsh in township twenty-one * * * "except lots fronting on the river."

In the White patent the recital is, viz:

"All the unsurveyed marsh *west of lots fronting on the right bank* "*of the Mississippi.*" (Our italics.)

Thus it is shown that the evidence in the instant case is stronger and more explicit on this point than that in the Buck case, and as in the Buck case we held it to have been a fact established by the patent that the surveyed lots fronting on the Mississippi river were to be taken as the initial point in calculating the area of land which was thereby actually conveyed, for so much the greater reason must said front lots be taken as such initial point of calculation in the instant case, for the reason that patent 4058 *fixes* said lots as the eastern boundary of the marsh it conveys.

Upon this theory White has taken an improper starting
171 point for the ascertainment of the land which is called for by his patent, as we construe the sale to him as one made by measure of a definite fixed quantity of marsh land, the eastern boundary of which is the surveyed lots which are described in the Connelly survey.

Counsel for the plaintiff relies very much upon the statute of 1880 as justifying his claim to the whole of the aforesaid township twenty-two on the ground that same was sea marsh when he bought it in 1890, and the district judge cites section eleven thereof in his opinion.

But we are quite confident that the language of that act does not justify the conclusion that has been thus drawn therefrom.

It is of the following tenor, viz:

"That the public lands donated by Congress to the State of "Louisiana, *designated as sea marsh*, or prairie, subject to tidal over-"flow, so as to render them unfit for settlement and cultivation, "*shall be subject to entry and sale at the rate of twelve and a half cents* "*per acre*," &c.

(Our italics.) Section 11 of act 75 of 1880.

In our opinion that section of the statute authorized the register to make a sale of the sea marsh by measure only, and we think the language of the preceding section makes this construction of section eleven perfectly clear.

It is as follows, viz:

"That *the public lands* donated by Congress to the State of Louis-"iana, '*shall be subject to sale and entry, at the rate of seventy-five cents* "*per acre*, for any number of acres,'" &c.

(Our italics.) Section 10, *id.*

The declaration in each section is just the same; that the sea

marsh shall be subject to entry and sale, and that the public lands shall be subject to sale and entry.

Therefore there is no stronger justification for the claim
172 that the register was authorized to sell sea marsh without any reference to measure or quantity than there would be that he was thus authorized to make sale of the swamp lands which are above tidal overflow; and we do not consider it a material circumstance that in patent 4058 the register did not specify any particular sections or designate any particular boundary other than the front of the surveyed lots on the Mississippi river.

In the well-considered case of Harden *vs.* Jordan, 140 U. S., 371, the Supreme Court, upon a review of adjudicated cases, announced the rule of jurisprudence to be that grants by the United States of its public lands bounded on streams and other water-courses made without reservation or restriction are to be construed as to their effect according to the law of the State in which the lands lie, especially in cases where the boundaries are streams of fresh water.

Manchester *vs.* Massachusetts, 139 U. S., 240.
Barney *vs.* Keokuk, 94 U. S., 324.
Packer *vs.* Bird, 137 U. S., 661.

It has been for a great many years the well-established course of decision in this State, founded upon the principles of the civil law and the precepts of our code, that "title by alluvion is a purely "accessory right, attaching exclusively to riparian proprietorship "and incapable of existing without it."

In other words, the essential thing first to be done is that the purchaser shall acquire a title to a riparian estate—that is, one actually bordering upon a water-course—and the accretions which are successively and imperceptibly added thereto *afterwards* "are called alluvion." R. C. C., 509.

Succession of Delachaise *vs.* Maginnis, 44 A., 1043.
Stephenson *vs.* Goff, 10 R., 99.

These principles were applied to this particular territory by this court in Buras *vs.* O'Brien, 42 A., 528, speaking through Mr.
173 Justice Fenner as its organ, from which we extract the following, viz:

"Plaintiff's claim of title by accession resulting from accretion "seems to us equally unfounded.

"The evidence shows that after the Mississippi river found a new "channel through what is called the Jump this land was formed "by deposits from its overflow, as an island in West bay. Between "the waters of West bay and the southern line of plaintiff's sec- "tions, as established by the field-notes of Connelly, there was a "stretch of sea marsh, which was ceded by the United States to the "State of Louisiana under an act of Congress in 1849. Therefore "the State, and not the plaintiff, was riparian proprietor on West "bay, and no accretion there formed could benefit plaintiff; nor "*were* the plaintiffs riparian proprietors on the Jump in front of "this land."

As, in our opinion, this controversy is quite similar to the one presented in *Buras vs. O'Brien*—that is to say, one for the determination of the area of sea marsh which is covered by a State patent—our conclusion is that the plaintiff's patent 4058 does not extend to nor include the land which is called for by the patents which were subsequently issued by the State to the defendant H. J. Leovy, and that consequently there is no conflict between them.

Under the jurisprudence and statutes of this State governing the sale and entry of swamp and marsh lands, we think it our duty to consider all the provisions and recitals of patents issued therefor and to give same effect according to their tenor; and thus considering the patent of the plaintiff, we regard it as evidencing a sale by *measure* and not by estimation of quantity. We consider the words thereof "containing 3,840 acres" as limiting the words preceding, "all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi," and that the reference made therein to "the official plat of the survey of said lands in the State land
174 office" was intended to verify and confirm the statement as to the *character* and *extent* of the area of land which was actually conveyed to the patentee.

We are of the opinion that inasmuch as the plaintiff's patent 4058 calls for "all the unsurveyed *marsh* west of lots fronting on the Mississippi, except section sixteen in township twenty-two," he is not entitled to survey, select, and appropriate *all the dry land or swamp land above overflow* in said township in order to make out the quantity of "3,840 acres" he purchased.

We are of opinion that inasmuch as the patent conveys "all the unsurveyed marsh *west* of the lots fronting on the Mississippi," those lots must be taken as the initial point from which the area is to be computed, same being the only fixed and definite boundary mentioned in the patent.

Thus considering the law and the evidence, we are of opinion that there should be judgment in favor of the defendant H. J. Leovy maintaining his patents as reflecting the paramount title to the lands which are therein described, and perpetuating his writ of injunction.

But we do not regard this as a proper case for the allowance of vindictive or punitory damages, and on account of the paucity of proof of actual and compensatory damages, if any, we prefer to dismiss that claim as of nonsuit.

It is therefore ordered, adjudged, and decreed that the judgment appealed from be annulled and reversed, and it is further ordered and decreed that the demands of the plaintiff be rejected, and that the title of the defendant be maintained and his injunction perpetuated, and that all costs be taxed against the plaintiff. In other respects let there be a judgment of nonsuit.

The chief justice, not having heard the argument in this case, takes no part in this opinion.

175 *Final Judgment.*

(Extract from the Minutes, December 13th, 1897.)

NEW ORLEANS, MONDAY, *December 13th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 12501.

On appeal from the twenty-second judicial district court for the parish of Plaquemines.

It is ordered, adjudged, and decreed that the judgment appealed from be annulled and reversed; and it is further ordered and decreed that the demands of the plaintiff be rejected, and that the title of the defendant be maintained and his injunction perpetuated, and that all costs be taxed against the plaintiff. In other respects let there be a judgment of nonsuit. (The chief justice takes no part in this decision, having been absent at the argument.)

Petition for Writ of Error and Order.

(Filed December 28th, 1897.)

Supreme Court of Louisiana.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. 12501.

To the honorable the chief justice of the supreme court of the State of Louisiana:

176 The petition of Robert M. White, plaintiff and appellee, in the above entitled and numbered cause respectfully shows:

That on the 13th day of December, 1897, this honorable court rendered a decree and entered judgment herein in favor of defendants and against this plaintiff, which said decree and judgment became final on the — day of December, 1897.

That in said judgment and decree and the proceedings prior thereto certain errors were committed to the prejudice of this plaintiff; all of which will more in detail appear from the assignment of errors which is filed with this petition.

That in this case plaintiff has claimed rights, privileges, and immunities under the Constitution and laws of the United States, and

that the decree and judgment of this honorable court is adverse to the same.

That there was drawn in question the validity of an authority exercised under the United States, and the decision of this honorable court is against its validity.

That there was drawn in question the validity of a statute and of an authority exercised under the State of Louisiana on the ground of their being repugnant to the Constitution of the United States, and the decisions was in favor of their validity, wherein manifest errors have happened, to the great damage of petitioner.

That petitioner desires a writ of error from the said decree and judgment of this honorable court to the Supreme Court of the United States.

Wherefore petitioner prays that a writ of error to operate as a supersedeas may issue in this behalf to the Supreme Court of the United States for the correction of errors so contained, and that a transcript of the record of the proceedings and papers in this case, duly authenticated, may be sent to the said Supreme Court of the United States.

(Signed) E. HOWARD McCALEB,
E. HOWARD McCALEB, JR.,
Attorneys for Plaintiff.

Order.

Let a writ of error to operate as a supersedeas issue herein
177 as prayed for on plaintiff in error furnishing bond in the sum of $500.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice Supreme Court of Louisiana.

New Orleans, December 28th, 1897.

(Endorsed:) No. 12501. Supreme court of Louisiana. Robert M. White *vs.* August F. Leovy *et als.* Application for writ of error. E. Howard McCaleb, E. H. McCaleb, Jr., att'ys. Filed 28th Dec'r, 1897. (Signed) T. McC. Hyman, clerk.

Assignment of Errors.

(Filed 28th Dec'r, 1897.)

Supreme Court.

ROBERT M. WHITE
vs.
AUGUST F. LEOVY ET ALS. } No. —.

Assignment of errors.

Plaintiff in this cause, in connection with his petition for a writ of error, makes the following assignment of errors, which he avers are to be found in the opinion, judgment, and decree of this honorable court herein:

1. That the court erred in holding that the survey of G. F. Connelly, United States deputy surveyor, made in 1836 under the authority of the United States Government, by which the land patented to the plaintiff and granted to him by the State of Louisiana could be questioned or impeached by defendants, or that any subsequent survey of said land could be authorized or recognized by the State of Louisiana after she had parted with her title thereto by issuing her patent to the plaintiff; that there was thus drawn in question the validity of a statute of or an authority exercised under the United States, and the decision of this honorable court is against their validity.

178 2. That the court erred in holding that the State (after she had agreed by act No. 336 of 1850 to accept the donations of swamp lands under the acts of Congress, according to the field-notes thereof made by the United States deputy surveyor, and after she had granted to the plaintiff said lands according to the said official survey and field-notes) could subsequently authorize or recognize any other survey and issue other patents to the defendant Henry J. Leovy, according to a subsequent survey; that there was thus drawn in question the validity of a statute of the State of Louisiana or an authority exercised under said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision of this honorable court is in favor of their validity.

3. That this court erred in refusing to hold that the United States Government (as the owner of the unsurveyed sea marsh in township 22 south, range 31 east, southeastern west of river land district, mentioned and referred to in the survey and field-notes of said G. F. Connelly, United States deputy surveyor, made in 1836, adjacent to the seashore, known as "West bay") acquired all the alluvion made by the accretions to said land between the years 1836 and 1850, and when the said lands were granted by the United States to the State of Louisiana under the acts of Congress known as the swamp-land acts, and in refusing to hold that plaintiff, as patentee of the State, acquired all of said lands, as well as the accretions which were added thereto, as they were at the time they were granted by the United States to the State; that there was thus drawn in question the validity of statutes of or an authority exercised under the United States, and the decision of this honorable court is against their validity.

4. That the court erred in refusing to hold that the grant made under the acts of Congress known as the swamp-land acts passed the title of the United States Government to all the unsurveyed sea marsh west of lots fronting on the right bank of the Mississippi, in township 22 south, range 31 east, in the southeastern west of river land district, according to the official survey of said lands, not only as they were at the time of the said survey in 1836 by G. F.

179 Connelly, United States deputy surveyor, but as they were at the date of said grants in 1849 and 1850, and in refusing to hold that the said Robert M. White, plaintiff herein, acquired all of said lands, as well as the accretions which were added thereto, according to the official survey in the State land office, as they were

at the time they were granted by the United States to the State of Louisiana aforesaid, except the sixteenth section; that plaintiff's right to said alluvion is a vested right inherent in the property itself, which the State could not divest; that there was thus drawn in question the validity of a statute of or an authority exercised under the State of Louisiana, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision of this honorable court is in favor of their validity.

5. That the court erred in holding that the patents granted by the State of Louisiana to Henry J. Leovy, defendant, did not cover any parts or portions of the land in township 22 south, range 31 east, in the southeastern west of river land district, previously sold and patented by the State of Louisiana to plaintiff under the patent No. 4058 of all the sea marsh west of lots fronting on the right bank of the Mississippi river in said township, except the 16th section; that there was thus drawn in question the validity of a statute of the State of Louisiana and of an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision of this honorable court is in favor of their validity.

6. That the court erred in holding that the State of Louisiana, by issuing patents to the defendant Henry J. Leovy for parts and portions of the land in township 22 south, range 31 east, in the southeastern west of river land district, which the said State had previously granted to Robert M. White, did not violate the Constitution of the United States, in that it did not impair the obligation of the contract entered into by the State of Louisiana with said Robert M. White, evidenced by patent No. 4058, issued to him by said State.

7. That the court erred in holding that the issuance of patents to defendant Henry J. Leovy for parts or portions of the lands in township 22 south, range 31 east, in the southeastern west of
180 river land district, by the officers of the State of Louisiana, claiming to act under a statute of said State, viz., act No. 75 of the General Assembly of the State of Louisiana of the year 1880, approved April 7, 1880, previously sold to Robert M. White by the said State of Louisiana under patent No. 4058, without notice, hearing, or trial, is not violative of the 14th amendment to the Constitution of the United States, prohibiting a State from depriving any person of his property without due process of law.

8. There is error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said August F. Leovy, Robert S. Leovy, and Henry J. Leovy, defendants, against the said Robert M. White, plaintiff, whereas by the law of the land the said judgment ought to have been given for the said Robert M. White against the said August F. Leovy, Robert S. Leovy, and Henry J. Leovy, and the said Robert M. White prays the judgment aforesaid may be reversed, annulled, and altogether held for

nothing, and that he may be restored to all things which he has lost by occasion of the said judgment.

And for general relief.

(Signed) E. HOWARD McCALEB,
E. H. McCALEB, JR.,
Attorneys for Plaintiff.

(Endorsed:) No. 12501. Supreme court of Louisiana. Robert M. White *vs.* August F. Leovy *et als.* Assignment of errors. Filed 28th Dec'r, 1897. (Signed) T. McC. Hyman, clerk. E. Howard McCaleb, E. H. McCaleb, Jr., att'ys.

Copy of Writ of Error Lodged in Clerk's Office of the Supreme Court of the State of Louisiana.

(Filed 28th Dec'r, 1897.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

181 Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court in the suit in which Robert M. White is plaintiff and August F. Leovy, Robert S. Leovy, and Henry J. Leovy are defendants, No. 12501 of the docket of said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between said above-named parties, said Robert M. White, being domiciled in the parish of Plaquemines, State of Louisiana, and the said August F. Leovy and Robert S. Leovy, being domiciled in the parish of Plaquemines, State of Louisiana, and Henry J. Leovy, being domiciled in the city of New Orleans, State of Louisiana, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Robert M. White, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States,

together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

182 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 28th day of December, in [SEAL.] the year of our Lord one thousand eight hundred and ninety-seven.

(Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
(Signed) FRANCIS T. NICHOLLS,
Chief Justice of Louisiana.
Dec'r 28, 1897.

(Endorsed:) No. 12501. Robert M. White *versus* August F. Leovy *et als.* Writ of error. Copy of writ of error lodged in the clerk's office of the supreme court of Louisiana, in pursuance of the statute in such cases made and provided, this 28th day of December, one thousand eight hundred and ninety-seven. E. Howard McCaleb, E. H. McCaleb, Jr., attorneys of plaintiff in error. Filed 28th Dec'r, 1897. (Signed) T. McC. Hyman, clerk.

Bond for Writ of Error.

(Filed 29th Dec'r, 1897.)

Know all men by these presents that we, Robert M. White, as principal, and Ben Burns, as surety, are held and firmly bound unto August F. Leovy, Robert S. Leovy, and Henry J. Leovy in the full and just sum of five hundred ($500) dollars, to be paid to the said August F. Leovy, Robert S. Leovy, and Henry J. Leovy, their and each of their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with out seals and dated this 29th day of December, in the year of our Lord one thousand eight hundred and *eighty*-seven (A. D. 1897).

183 Whereas lately, in the supreme court of Louisiana, in a suit depending in said court, wherein Robert M. White is plaintiff and August F. Leovy, Robert S. Leovy, and Henry J. Leovy are defendants, judgment was rendered against said plaintiff, Robert M. White, and in favor of said defendants, and the said Robert M. White, plaintiff, having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court of Louisiana to reverse the judgment in the aforesaid suit, and citation directed to the said August F. Leovy, Robert S. Leovy, and Henry *T.* Leovy,

citing and admonishing them and each of them to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days:

Now, the condition of the above obligation is such that if the said Robert M. White shall prosecute his writ to effect and answer all damages and cost if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sg.) ROBERT M. WHITE. [L. S.]
(Sg.) BEN BURAS. [L. S.]
—— ——. [L. S.]

Sealed and delivered in the presence of—
(Sg.) E. HOWARD McCALEB.
(Sg.) E. H. McCALEB, JR.

Approved.
New Orleans, December 29, 1897.
(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } ss:

Personally appeared Ben Buras, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of five hundred ($500) dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) BEN BURAS.

Subscribed and sworn before me this 29th day of December, 1897.
[SEAL.] (Signed) ARTHUR B. LEOPOLD,
Notary Public.

184 (Endorsed:) No. 12501. Supreme court of Louisiana. Robert M. White *vs.* August F. Leovy *et als.* Bond for writ of error. Filed 29th Dec'r, 1897. (Signed) T. McC. Hyman, clerk.

Certificate of Clerk of the Supreme Court of the State of Louisiana.

UNITED STATES OF AMERICA,
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing one hundred and eighty-four pages contain a full, true, and complete copy of the transcript of the proceedings had in the twenty-second judicial district court for the parish of Plaquemines, State of Louisiana, in a certain suit wherein Robert M. White was plaintiff and August F. Leovy, Robert S. Leovy, and Henry J. Leovy were defendants, and also of all the proceedings had in this supreme court

on the appeal taken by said defendants, which appeal is now on the files thereof under No. 12501.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twenty-second day of January, *anno Domini* one thousand eight hundred and ninety-eight*h*, and in the one hundred and twenty-second year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

185 *Certificate of the Chief Justice.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court; that the signature of Thomas McCabe Hyman to the foregoing certificate in the case of Robert M. White *versus* August F. Leovy *et als.*, No. 12501 of the docket of this court, is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this twenty-second day of January, anno Domini one thousand eight hundred and ninety-eight, and in the one hundred and twenty-second year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

FRANCIS T. NICHOLLS,
Chief Justice.

186 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, in the suit in which Robert M. White is plaintiff and August F. Leovy, Robert S. Leovy, and Henry J. Leovy are defendants, No. 12501 of the docket of said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between said above-named parties—said Robert M. White being domiciled in the parish of Plaquemines, State of Louisiana, and the said August F. Leovy, Robert S. Leovy being domiciled in the parish of Plaquemines, State of Louisiana, and Henry J. Leovy being domiciled in the city of New Orleans, State of Louisiana—wherein was drawn in question the validity of a treaty or

statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty
187 or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Robert M. White, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 28th day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
FRANCIS T. NICHOLLS,
Chief Justice of Louisiana.

Dec'r 28, 1897.

188 [Endorsed:] No. 12501. Robert M. White *versus* August F. Leovy *et als.* Writ of error. Filed 28 Dec'r, 1897. T. McC. Hyman, clerk.

189 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to August F. Leovy, Robert S. Leovy, and Henry J. Leovy, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme

court of the State of Louisiana, at New Orleans, wherein Robert M. White is plaintiff in error and August F. Leovy, Robert S. Leovy, and Henry J. Leovy are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, Robert M. White, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal Supreme Court of the State of Louisiana.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

190 [Endorsed:] Supreme court of the State of Louisiana. No. 12501. Robert M. White *vs.* August F. Leovy *et als.* Blanc. Jan'y 24, '98. Henry Leovy. Citation. Filed January 24, 1898. T. McC. Hyman, clerk.

Sheriff's Return.

Received Monday, Jan. 24, 1898, a duly certified copy of the within citation, and on the same day, month, and year served said copy on Henry J. Leovy individually and as attorney of Robert S. Leovy and August F. Leovy, in person, by delivering the said copy to him in the city of New Orleans, State of Louisiana.

J. ARTHUR BLANC,
Deputy Sheriff, Parish of Orleans, La.

Sworn — and subscribed before me this 24th day of January, A. D. 1898.

{Seal of Arthur B. Leopold, Notary Public, Parish of Orleans, State of Louisiana.}

ARTHUR B. LEOPOLD,
Notary Public, Parish of Orleans, Louisiana.

Endorsed on cover: Case No. 16,784. Louisiana supreme court. Term No., 232. Robert M. White, plaintiff in error, *vs.* August F. Leovy, Robert S. Leovy, and Henry J. Leovy. Filed January 27th, 1898.

Supreme Court of the United States,

OCTOBER TERM, 1898.

No. 232.

ROBERT M. WHITE, PLAINTIFF IN ERROR

versus

AUGUST F. LEOVY ET ALS., DEFENDANTS IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief on Behalf of Plaintiff in Error.

The plaintiff, alleging himself to be the owner and in lawful possession of all the unsurveyed marsh, west of lots fronting on the right bank of the Mississippi, except section 16, in township 22 south, range 31 east, southeastern, west of river land district, containing 3840 acres, according to the official plat of survey, instituted suit against defendants, charging them with slandering his title to this property.

Defendants, justifying averring a superior title and alleging possession of part of the land claimed by plaintiff to be included in his patent, averred ownership and possession thereof, and reconvened, setting up title to certain fractional sections of the land within the township previously patented to plaintiff. The defendant thereby became plaintiff in a petitory action, or what is known at the common law as an action of ejectment. (Gilman vs. Poindexter, 10 How. 25); "and must succeed or fail upon the strength of his own title and "not upon the weakness of his adversary's." Clarkston vs. Vincent, 32 Ann. 613; Dalton vs. Wickliffe, 35 Ann. 355; Gay vs. Ellis, 33 Ann. 249; Sully vs. Spearing, 40 An. 558.

Thus, it appears, that the positions of the parties have, by the pleadings, become reversed—the defendant, Henry J. Leovy, takes the place of the plaintiff in a petitory action or action of ejectment, the plaintiff, White, becoming the defendant in such action.

When the case was called for trial in the court of the first instance, the plaintiff filed an exception and demurrer to the answer and plea in reconvention set up by defendants, raising certain federal questions.

This exception is as follows:

"Now, into this Honorable Court comes Robert M. White, plaintiff in the above entitled and numbered cause, by his undersigned counsel, and for exception and demurrer to the answer and plea in reconvention herein filed by defendant, says:

"1st. That the official plat and survey of G. F. Connelly, United States Surveyor, made in 1836, under the authority of the United States Government, by and in accordance with which plat and survey, the lands owned by the plaintiff and described in the patent annexed to the supplemental petition filed in this cause, were patented and granted to the State of Louisiana by the United States Government, and subsequently sold and patented by the State of Louisiana to the said Robert M. White, plaintiff, cannot be questioned or impeached by defendant in this suit, and this court is wholly without jurisdiction, *ratione materiæ*, to inquire and determine whether said official plat or survey is erroneous.

"2d. That the patent issued to the said Robert M. White, plaintiff, cannot be questioned or impeached by defendant or any private individual, but only at the suit of the government.

"3d. That the United States Government, as the owner of the unsurveyed sea-marsh, mentioned and referred to in the survey, plat, field notes and description of G. F. Connelly, United States Surveyor, made in 1836, adjacent to the sea-shore, known as West Bay, and as sovereign acquired all the alluvion made by accretion to said land between the years 1836 and 1850, and when said lands were granted by the United States Government and the State of Louisiana, as grantee of the United States Government, and the said R. M. White, plaintiff, as patentee of the State of Louisiana, acquired all of said lands, as well as the accretions which were added thereto as they were at the time they were granted by the United States to the State of Louisiana.

"4th. That the grant made under the acts of Congress, approved March 2d, 1849, and September 28th, 1850, known as the "Swamp Land Act," passed the title of the United States Government to all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi, in township 22, south range No. 31 east, in the southeastern, west of river, land district, not only as it was at the time of the survey by G. F. Connelly in 1836, but as it was at the date of the said grants in 1849 and 1850, so that the United States did not retain any interest in any accretion formed between the survey in 1836 and the date of the grant to the State of Louisiana; and the said R. M. White, plaintiff herein, acquired all of said land in township No. 22,

south range No. 31 east, in the southeastern, west of river, land district, as they were at the time they were granted by the United States Government to the State of Louisiana, as aforesaid.

"5th. That the patent issued by the State of Louisiana to the said R. M. White, plaintiff herein, No. 4058, of 'all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi, in township No. 22, south range No. 31 east, in the southeastern, west of river, land district,' evidences a contract between the State of Louisiana and the said R. M. White, plaintiff herein, and the State of Louisiana could not subsequently lawfully grant unto the defendant, Henry J. Leovy, or others, any part or portion of the lands in said township, and by so doing, as defendant pretends, has attempted to impair the obligation of the contract between the State of Louisiana and the said R. M. White, plaintiff herein, and deprive him of his property without due process of law, in violation of the Constitution and laws of the United States.

"6th. That the patents of lands issued to the defendant, Henry J. Leovy, referred to in the answer and plea in reconvention herein, filed by him, were made, issued and delivered subsequent to the said patent No. 4058, issued to R. M. White, plaintiff herein, are embraced in and covered by the patent previously issued to the plaintiff. Therefore, the said patents so subsequently issued to the defendant by the State of Louisiana, are illegal, null and void, being for land embraced within the patent of plaintiff; and the State of Louisiana in issuing said patents to the defendant, Henry J. Leovy, sought to impair the obligation of the contract entered into by her with the said R. M. White, plaintiff herein, and sought to deprive him of his property without due process of law, in violation of the Constitution and laws of the United States.

"7th. That all the acts and doings of the State of Louisiana and of defendant, Henry J. Leovy, hereinabove recited, are contrary to and violative of the Constitution and laws of the United States.

"Wherefore, plaintiff and appearer prays that this exception be filed; and he moves the court to strike out all that portion of defendant's answer and plea in reconvention, alleging error in the official plat and survey made by G. F. Connelly in 1836, or any change in the nature and character of the unsurveyed marsh west of lots fronting on the right bank of the Mississippi, in township 22, south, range No. 31 east, in the southeastern, west of river, land district, by accretion or otherwise, and also all averments of fraud contained in said answer and plea in reconvention, and also all averments of defendant setting up title to any of said lands under patents subsequent in date to that of R. M. White, plaintiff; and that all evidence in support of said averments be excluded, rejected and disallowed for the reason above recited.

"And he prays that this exception be sustained, and for general relief."

The district judge sustained this exception and motion to strike out.

After hearing the evidence, the judge of the district court for the parish of Plaquemines rendered judgment in favor of plaintiff and against defendants, from which defendants appealed to the Supreme Court of Louisiana. There, the judgment of the district court was reversed, plaintiff's demand rejected, and judgment rendered in favor of the defendants.

The opinion of the Supreme Court of Louisiana covers twenty-nine printed pages of the reports. See Robert M. White vs. August F. Leovy et als., 49 An. 1660, *et seq.*

From this decision the plaintiff sued out this writ of error.

ASSIGNMENT OF ERRORS.

1. That the court erred in holding that the survey of G. F. Connelly, United States Deputy Surveyor, made in 1836, under the authority of the United States Government, by which the land patented to the plaintiff, and granted to him by the State of Louisiana, could be questioned or impeached by defendants, or that any subsequent survey of said land could be authorized or recognized by the State of Louisiana after she had parted with her title thereto by issuing her patent to the plaintiff. That there was thus drawn in question the validity of a statute or of an authority exercised under the United States, and the decision of this honorable court is against their validity.

2. That the court erred in holding that the State, after she had agreed by Act 336, of 1850, to accept the donations of swamp lands under the acts of Congress, according to the field notes and surveys thereof made by the United States Deputy Surveyor, and after she had granted to the plaintiff said lands, according to said official survey and field notes could subsequently authorize or recognize any other survey and issue other patents to Henry J. Leovy, defendant, according to a subsequent survey.

That there was thus drawn in question the validity of a statute of the State of Louisiana, or an authority exercised under said State on the ground of their being repugnant to the Constitution and laws of the United States, and the decision of this honorable court is in favor of their validity.

3. That this court erred in refusing to hold that the United States Government (as the owner of the unsurveyed sea marsh in township 22, south, range 31 east, southeastern, west of river, land district, mentioned and referred to in the survey and field notes of said

G. F. Connelly, United States Deputy Surveyor, made in 1836, adjacent to the seashore, known as "West Bay," acquired all the alluvion made by the accretions to said land between the years 1836 and 1850; and when the said lands were granted by the United States to the State of Louisiana, under the acts of Congress, known as the Swamp Land Acts; and in refusing to hold that plaintiff, as patentee of the State, acquired all of said lands, as well as the accretions which were added thereto, as they were at the time they were granted by the United States to the State. That there was thus drawn in question the validity of the statutes of or an authority exercised under the United States, and the decision of this honorable court is against their validity.

4. That the court erred in refusing to hold that the grant made under the acts of Congress, known as the Swamp Land Acts, passed the title of the United States Government to all the unsurveyed sea-marsh west of lots fronting on the right bank of the Mississippi, in township 22 south, range 31 east, in the southeastern, west of river, land district—according to the official survey of said lands, not only as they were at the time of the said survey, in 1836, by G. F. Connelly, United States Deputy Surveyor, but as they were at the date of said grants in 1849 and 1850; and in refusing to hold that the said Robert M. White, plaintiff herein, acquired all of said lands as well as the accretions which were added thereto, according to the official survey in the State Land Office, as they were at the time they were granted by the United States to the State of Louisiana aforesaid, except the sixteenth section. That plaintiff's right to said alluvion is a vested right inherent in the property itself which the State could not divest. That there was thus drawn in question the validity of a statute and of an authority exercised under the State of Louisiana, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision of this honorable court is in favor of their validity.

5. That the court erred in holding that the patents granted by the State of Louisiana to Henry J. Leovy, defendant, did not cover any parts or portions of the land in township 22 south, range 31 east, in the southeastern, west of river, land district, previously sold and patented by the State to plaintiff, under the patent No. 4058, of all the sea marsh, west of lots fronting on the right bank of the Mississippi river, in said township, except the 16th section. That there was thus drawn in question the validity of a statute of the State of Louisiana, or of an authority exercised under the State of Louisiana, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision of this honorable court is in favor of their validity.

6. That the court erred in holding that the State of Louisiana,

by issuing patents to the defendant, Henry J. Leovy, for parts and portions of the land in township 22 south, range 31 east, in the southeastern, west of river, land district, which the said State previously granted to Robert M. White, did not violate the Constitution of the United States, in that it did impair the obligation of the contract entered into by the State of Louisiana with the said Robert M. White evidenced by the patent No. 4058, issued to him by said State.

7. That the court erred in holding that the issuance of patents to defendant, Henry J. Leovy, for parts or portions of the lands in township 22 south, range 31 east, in the southeastern, west of river, land district, by the officers of the State of Louisiana, claiming to act under a statute of said State, viz: Act No. 75, of the General Assembly of the State of Louisiana, of the year 1880, approved April 7th, 1880, previously sold to Robert M. White by the said State of Louisiana, under patent No. 4058, without notice, hearing or trial, is not violative of the 14th amendment to the Constitution of the United States, prohibiting a State from depriving any person of his property without due process of law.

The township 22, the whole of which is claimed by plaintiff, with certain exceptions mentioned in his patent, was surveyed by G. F. Connelly, United States Deputy Surveyor, in 1836, under the authority of the United States Government. Only the exterior or township lines were run, the sectional lines within the township have never been run by any recognized authority.

In Heath vs. Wallace, 138 U. S. 584, it was held that:

"After the United States surveys had been made, there was no necessity for any further survey by the State in order to locate the swamp lands. In fact, there could be no State survey after that date of any recognized force."

In 1836, the Mississippi river broke through its banks at what is known as the "Jump," about four miles north of the upper boundary of township 22, and the annual overflows and sedimentary deposits of this stream have since continued to elevate the marsh land contained within this township. In 1852, it appears, that the Secretary of the Interior, in obedience to the Swamp Land Act of 1849, approved this township to the State of Louisiana. This approval is as follows:

"The approval by the Commissioner of the general land office of Mississippi swamp and overflowed land, under act of Congress, approved March 2, 1849, and which approval bears date May 6, 1852, shows all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi river, in township 22 south, range 31 east, except the 16th section, estimated area thirty-eight hundred and forty acres (3840)." R., p. ——.

The approval of this township, which is a partial or fractional one, was never surveyed, but *the area was estimated.*

The approval of this entire township to the State, with the exception of the 16th section and the front lots by the United States Government, shows that it contains an *estimated area of 3840 acres*, the exact number mentioned in the patent obtained by White from the State of Louisiana in 1890. The acreage of this character of land—sea-marsh—has always been estimated. In Martin vs. Marks, 97 U. S. 345, this court held that the area in that case, as in this, was estimated.

It will be noted that White first applied to the register to purchase the whole of the unsurveyed marsh in this township. The register received from him the purchase price with the understanding that he was to inquire as to White's right to enter this land, and that this question should be submitted to the Attorney General for his opinion (see register's receipt offered in evidence by plaintiff).

Section 9 of the Act 75, of 1880, provides that—

"The Attorney General of the State of Louisiana shall give his opinion and counsel to the said register, whenever requested, in any manner pertaining to the duties or business of the said register's office."

It was afterwards that the patent to this "unsurveyed marsh" was issued to White, showing that the Attorney General, the law officer of the Land Department, had advised and concurred in its issuance.

Turning to the decisions of the Secretary of the Interior of the United States, we find in Vol. 5, Dec. Sec. Int., pp. 514-520, and on review of the same case, on page 598 of the same, the honorable Secretary says:

"From the foregoing, it is clear that the State of Louisiana elected to make the field notes of survey the basis of the adjustment of both of said grants. Indeed, as appears in the quotation from the argument of counsel in said decision of March 25, 1887, 'the field notes made by the United States Deputy Surveyor were agreed upon as the basis as being a substantial compliance with the law;' and it would seem that the State, after the lapse of nearly forty years, is *estopped from denying such election*, if she were so disposed."

Again, the Commissioner of Public Lands of the United States, on November 21, 1885, in Vol. 4, Dec. Sec. of Int., pp. 524 and 525, held: "The rule in force from the beginning has been that a State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the government." See Sec. decision, 1 Lester, 553; *Id.*, 571, C. L. O. 149 and September 19, 1879.

"The State of Louisiana elected under her own motion to have the swamp land grant finally adjudicated in this manner; the State is bound, and also the government, by what the field notes disclose. If they show swamp lands, such lands will be listed, and the uniform acquiescence of the Legislature shows the State as recognizing it." (See, also, Act 336, of 1850, page 250.)

The State has patented to White the same land acquired by her

from the United States under Connelly's survey and field notes. The fact that the area or acreage is estimated does not in any way invalidate the title acquired by White from the State.

In Vol. 8, p. 65, Decisions of the Department of Interior, relating to public lands, it is held that:

"Under the regulations of the department which allowed selections of unsurveyed swamp lands to be made and certified by *estimated areas*, where an entire body of land was swamp and overflowed, and the uniform ruling of the department hitherto, it is held that selections so made and reported to the general land office prior to the passage of the act of March 3d, 1857, were confirmed by said act and the title thereto made complete.

"If the lands so selected and reported can be designated in the patent by metes and bounds, or by any other accurate description which clearly indicates and describes the particular land selected, the want of survey will be no objection to the issuance of patent." And at page 369 it was held that:

"Selections may be made of *unsurveyed swamp lands by estimated areas* if the entire body of land is unquestionably of the character granted, and the selection does not conflict with the claims of others."

In Vol. 18, page 26, of the Decisions of the Department of the Interior relating to public lands, it was held that:

"Patents under the grant of swamp lands may issue to the State of Florida covering 'the Everglades,' upon an *estimated area*, and designated by metes and bounds, excepting therefrom all islands and bodies of water not subject to the terms of the grant."

And in Vol. 19 of the same decisions, p. 251, it is held that:

"It appearing that the *unsurveyed body* of land lying within the State of Florida, known as the Everglades is, in fact, swamp, and that a survey thereof is not practicable, patent may issue to the State under the swamp grant upon an *estimated area* designated by metes and bounds, the State to furnish a meander survey of said 'Everglades,' accompanied by satisfactory proof that said meander line does not include within its limits lands not of the character granted."

Hence, we say that the grant made by the United States to the State of Louisiana, under the act of 1849, of this unsurveyed sea-marsh, according to the estimated area, is perfect, good and valid. The Supreme Court of the United States has so held in the case of Morris vs. Marks (*supra*), where the area was estimated, and this court has recognized the validity of a similar patent in State of Louisiana vs. Buck, 46 An., p. 656.

In Newsom vs. Pryor, 7 Wheaton, page 8, Chief Justice Marshall, in delivering the opinion of the court, said:

"It is apparent that a survey was not made in fact, but that, after making a beginning corner, the surveyor made out and returned a plat, which he supposed would comprehend the land intended to be acquired. *It is now too late to question the validity of grants made on such plats and certificates of survey. From the extraordinary circumstances of the country, they were frequent, and, in consequence of those circumstances, have received the sanction of courts. An immense number of*

titles, believed to be perfectly secure. depend upon the maintenance of such grants. The extent of the mischief which would result from unsettling the principle cannot be perceived, and is certainly too great now to be encountered. The patent, therefore, must be considered as if the survey had been actualiy made."

This being a sale of unsurveyed sea-marsh, contained in a fractional township, is in accordance with Secs. 7 and 14 of Act 75, of 1880. Upon the receipt of the Register of the State Land Office as receiver, the Governor only has the absolute power to issue patents to land purchased by patentees from the State. The section referred to by defendants' counsel merely authorizes the receiver of the land office to give a receipt for the land purchased by township sections and ranges.

Under the provisions of Act 7, of 1880, and especially Secs. 7 and 14, the Governor has as much power to issue a patent for land contained in a fractional township as he has the right to issue a patent for land contained in a fractional section.

This sea marsh was acquired from the United States under the provisions of the acts of Congress of 1849. The State of Louisiana, by Act No. 336, approved March 21st, 1850, p. 250, accepted of this grant, and specially provided: "That *no contract shall be made for the survey* of any of said lands that can be selected and listed to the satisfaction of the proper department of the government of the United States, by the *field notes* on file in the Surveyor General's office." It was under the field notes of the survey made by Connelly, wherein all the unsurveyed sea-marsh in township 22 south, range 31 east, was *estimated* at 3840 acres, exclusive of the front lots and the 16th section, that this land was approved to the State. See approval by Secretary of Interior, offered in evidence, bearing date, 1852.

And by section 5 of Act 104, E. S., General Assembly of Louisiana, 1871, it was made the duty of the Registrar to request the Surveyor General of the United States for Louisiana to have such surveys made thereof as may be necessary, in accordance with the existing laws and regulations governing such work.

White purchased from the State of Louisiana everything that the State acquired from the United States—that is, the whole of this township, except the front lots and section 16. The grant in this case is similar to that in Martin vs. Marks, 97 U. S. 345, where the area was estimated, instead of being established by an actual survey upon the ground. True, it is, that the corners have been established in this township by Connelly, so that the lines can be run in conformity with White's patent.

The survey made of this township is in conformity with the provisions of Sec. 2488 of the Revised Statutes of the United States, which

require that "in segregating large bodies of land, notoriously and obviously swamp and overflowed, it shall *not* be necessary to subdivide the same, but to run the exterior lines of such body of land."

There is no way of escaping from the fact that Leovy has purchased and obtained patents for sections and fractional sections in township No. 22 south, range 31 east, covered by White's patent, issued three years previously. In a case similar to this, this court took occasion to say:

"It is well settled that the State could have impeached the title thus conveyed to the canal company only by a bill in chancery to cancel or annul it, either for fraud on the part of the grantee, or mistake or misconstruction of the law on the part of its officers in issuing the patent, and *until so cancelled* or annulled *it could not issue to another* party *any valid patent for the same land.* * * * This is also the view taken of the question in Michigan vs. Flint & Pere Marquette Railroad, 89 Michigan, 481, 494. In that case the prior patent of the State was held to estop it from subsequently asserting title to the parcel of land conveyed, while its patent for the same land is outstanding. But whether there is any technical estoppel in the ordinary sense or not, *it cannot be maintained that the State can issue two patents, at different dates, to different parties, for the same land, so as to convey by the second patent a title superior to that acquired under the first patent.* Neither can the second patentee, under such circumstances, in any action at law be heard to impeach the prior patent for any fraud committed by the grantee against the State, or any mistake committed by its officers acting within the scope of their authority, and having jurisdiction to act and to execute the conveyance sought to be impeached." Chandler vs. Calumet and Hecla Mining Co., 149 U. S., pp. 93 and 94.

The authorities, both State and national, hold that even if there was more land comprised within the call of White's patent than he had paid for, that the State alone could complain in a suit brought for the supplement of the price. A second patentee is not vested with the power of the State in this respect.

In White vs. Burnley, 20 Howard (U. S.), 247, the Supreme Court of the United States, speaking through Mr. Justice Catron, said:

"The grant contains two leagues or more of fast land; and for this reason it was insisted at the trial that it was fraudulent and void. But the court charged the jury to the contrary, with several qualifications. These we deem to have been useless, as our opinion is that a regular grant (that is, a completed title, made by those exercising the proper political power to grant lands) is not open to this objection, by an opposing claimant setting up a younger title; and we understand that on this principle the well considered case of Hancock vs. McKinney (7 Texas), and of Swift vs. Herrera (9 Texas) proceed. Such is the settled doctrine elsewhere (Overton vs. Campbell, 5 Haywood, Tenn. Rep). How far the government of Texas might interfere 'by due course of law,' that is, by suit in its name and behalf, is a question for that government to decide. Owen vs. Raines' Lessee (5 Hey. Tenn. Rep. 106) is to the effect that it can only be done by suit. To hold that this grant is *void* because the surveyor returned an excess in his survey, without any

evidence that the grantee participated in the matter, as is the case here, would be an alarming doctrine through a wide-spread portion of the United States. *No instance is recollected where the State has interfered by suit to reform a land patent for excess of quantity.* The consideration of more or less of excess, to constitute a *prima facie* case of fraud, would give a latitude of discretion to the judicial department over the executive and granting power inconsistent with the independence of the latter is this branch of administration. * * That a case of excess sufficiently gross could arise to justify a proceeding by suit on the part of the State of Texas, to reform a Spanish grant, we do not doubt. But the question here is not of reform, it is of original nullity. * * *It is probable that no actual survey was made on the ground,* and hence it happened the surveyor's certificate stated that more than one-half of the boundary shown on the plat was covered by water and not subject to grant. Of this matter, the surveyor and the commissioner, as the judge of land distribution, had jurisdiction; it was their duty to act justly between the government and the grantee. The commissioner acted by extending the title of possession, and this vested a full title in Morales. No one at that time had any right to complain if the government was content. *It has so far acquiesced and younger grantees are bound by that acquiescence.*"

Neither the State nor Federal courts have displayed much consideration for those who under the pretext of having discovered flaws in prior patents, have sought to enter and acquire the same land by a subsequent patent from the government.

In Davis vs. Fletcher, 11 An. 506, the Supreme Court of Louisiana repudiated a title similar to that set up by the defendants in this case. And in Cragin vs. Powell, 128 U. S. 691, the Supreme Court held that:

"One who acquires land knowing that it covers a portion of a tract claimed by another, will be held either not to mean to acquire the tract of the other, or will be considered to be watching for the accidental mistakes of others, and preparing to take advantage of them, and as such not entitled to receive aid from a court of equity."

It is admitted that Leovy had full knowledge of White's patent at the time he attempted to acquire a portion of the land covered by it from the State.

It will thus be seen that White's patent from the State of Louisiana conveyed a full, perfect and complete title to township 22 south, range 31 east, with certain designated exceptions, to-wit, the front lots and the 16th section.

Three years afterwards, without notice, without any hearing whatever, the defendant alleges that the State issued to him under and by virtue of Act No. 75, of 1880, patents to portions of this same land previously patented to White, and for which the State had received from him a valuable consideration. This construction and application of the act of Louisiana, approved April 7, 1880, is clearly violative of Sec. 10, Art. 1, of the Constitution of the United States, which pro-

vides, that "no State shall pass any law impairing the obligation of contracts." The obligation of White's contract is evidenced by his patent, and any law impairing that obligation violates the Constitution of the United States.

In Davis vs. Gray, 16 Wall., this court said:

That "the act of incorporation and the land grant here in question, were contracts, is too well settled in this court to require discussion. As such, they were within the protection of the clause of the United States which declares that no State shall pass any law impairing the obligation of contracts. When a State becomes a party to a contract, as in the case before us, the same rules of law are applied to her as to private persons under like circumstances."

See also Pennoyer vs. McConnaughy, 140 U. S.

After all, a patent for land is nothing more or less than a sale by the government to a private individual or corporation, and is governed by the same rules which are applied to the contract of sale. It contains the three essential elements of a contract of sale—namely, the thing, that is, the land, the price and the consent. The consent of the government is manifested by the signature of its officers to the patent, and the consent of the grantee by his acceptance of the patent and the payment of the price. "In the sale of the public lands the government and its purchaser are governed by the same principles which apply to individual vendors and vendees." Dufresne vs. Haydel, 7 An. 662.

We, therefore, contend that the action of the State officers charged with the administration and alienation of the lands acquired from the United States under the Swamp Land Act, in issuing patents to Henry J. Leovy to certain sections embraced within township 22 south, range 31 east, which had been sold and patented to White three years previously, deprived him of his property without due process of law.

No notice, no hearing, no opportunity to defend the validity of his patent was given to the plaintiff in error by the officers of the State.

"Due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights. A hearing or an opportunity to be heard is absolutely essential."

Black's Constitutional Law, pp. 481, 212.

Pennoyer vs. Neff, 95 U. S. 715.

It is true that the State acts through its officers and agents by whom its powers are exercised, but it has been held, however, that:

"The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal prosection of the laws. Whoever, by virtue of public position under a State government, deprives another of property without due process of the law * * * violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power

his act is that of the State." (*Ex parte* Virginia, 100 U. S. 347; Pacific Gas Imp. Co. vs. Ellert, Mayor, et al., 64 Fed. Rep. 421; Chicago, B. & Q. R. Co., 166 U. S. 258.)

Before issuing patents to Leovy to portions of land contained in the township previously patented to White, the State should have (first) instituted suit to cancel its patent, and until such cancellation was obtained, it could not lawfully issue to another party any valid patents to the same land.

"It cannot be maintained that the State can issue two patents at different dates, to different parties, for the same land, so as to convey by the second patent a title superior to that acquired by the first patent." Chandler vs. Calumet & Hecla Mining Co., 149 U. S. 93 and 94.

Patents for land can only be impeached for fraud at the suit of the government.

Fields vs. Seabury, 19 How. 323; Smelting Co. vs. Kemp, 104 U. S. 657; Vance vs. Burbank, 101 U. S. 514.

If White obtained more land than he paid for, the State of Louisiana could have instituted a suit, instead of unlawfully issuing patents to Leovy, for a supplement of the price. Revised Civil Code of Louisiana, Arts. 2493, 2494, 2496, 2497, 2498; Phelps vs. Wilson, 16 La. 197; Stewart vs. Boyd, 15 An. 170.

A similar doctrine was held by this court in Lindsey vs. Hawes, 2 Black, 560 and 561, where the court said:

"We do not here deny the right of the government *which has sold land by the acre at a fixed price*, to make a new survey before it parts with the title, and *if there is any more land than was paid for*, to require the deficiency to be paid before it issues a patent. On that subject we decide nothing, because it is not necessary in this case. Lindsey's heirs were never notified of the additional number of acres found to be in the fraction, nor were they required or permitted to pay for this increase."

Even if White obtained five times more land (situated in this township 22), than he paid for this would not authorize the State to issue patents to other parties for the excess of any land contained in this township.

A patent is not revocable, impeachable or in any way affected by the fact that the patentee obtained much more land than he has paid for to the government. The Supreme Court of the United States has so decided in the following cases: "The patentee is not bound and concluded by the number of acres mentioned in the patent." Brown's Lessee vs. Clements, 3 How. 650, 665, 667 and 668.

Robinson vs. Moore, 4 McLean, p. 279; Newson vs. Pryor, 8 Wheat., p. 8.

The contention of Leovy that White has obtained a greater quantity of land than he paid for, is not supported by the evidence. The plat made by Surveyor Lewis, offered in evidence by defendant,

to show the nature, character and description of the *locus in quo*, discloses the remarkable fact that almost the whole of township 22 south, range 31 east, is covered by an extensive network of navigable streams, called bayous, passes, etc. Bradford testifies that there are not more than five hundred acres of land in the whole township, or less than one-seventh of the number paid for by White.

White testifies it is a partial township; has 12,000 or 15,000 acres; nine-tenths being water (R., p.—).

White bought land, not water. The State of Louisiana did not and could not sell the land situated in this township covered by navigable waters, or by beds of streams. Land & Fisheries Company vs. Gasquet, 45 An. 759.

In Hardin vs. Jordin, 140 U. S. 380, it was held that:

"It has been the practice of the government from its origin in disposing of the public lands *to measure the price* to be paid for them *by the quantity of upland granted*, no charge being made for the lands under the bed of the stream or other body of water."

The survey of G. F. Connelly, United States Deputy Surveyor, made in 1836, according to which these lands were approved to the State of Louisiana by the Secretary of Interior in 1852, and by which survey the lands were patented to the plaintiff, could not be questioned or impeached, nor could any subsequent survey be authorized or recognized by the State of Louisiana after she had parted with her title by issuing her patent to the plaintiff White. Connelly's plat and notes of survey form part of White's patent.

"When lands are granted according to an official plat of their survey, the plat, with its notes, lines, descriptions and landmarks becomes as much a part of the grant by which they are conveyed, and so far as limits are concerned, controls as much as if such descriptive features were written out on the face of the deed. The court cannot determine whether an official survey is erroneous."

Craigin vs. Powell, 128 U. S. 691.

In Russell vs. Maxwell, 158 U. S. 253, the court held that:

"A survey made by the proper officers of the United States, and confirmed by the Land Department, is not open to challenge by any collateral attack in the courts."

But it is contended that the land in this township was increased by alluvial deposits, which are not covered by White's patent. This we deny.

White's patent gave him all the land in township 22 south, range 31 east, with the exception of the front lots and section 16, whether they were formed by accretions or otherwise; and, as the owner of the land in this township and as the patentee of the State, he had a vested right in the accretions so formed by the water courses running through the township. A right to this accretion, as well as to all lands in the township, was vested in White under his patent.

In Municipality No. 2 vs. Orleans Cotton Press, 18 La. 122, it was held that:

"The right to alluvial formation or batture is a vested right, inherent in the property itself and forms an essential attribute of it, resulting from natural law in consequence of the local situation of the land to which it attaches."

The attempt of the State to deprive its patentee of all the land in the township, whether made by accretion or otherwise, is to deprive White of his property without due process of law.

In Jeffries vs. East Omaha Land Company, 134 U. S. 194, it was held that:

"*The patent passed the title* of the United States to lot 4, *not only as it was at the time of the survey* in 1851, *but as it was at the date of the patent* in 1855, so that the United States did not retain any interest in any accretion formed between the survey in 1851 and the date of the patent."

Paraphrasing this expression of opinion by this court, we say, the patent passed the title of the United States to township 22 south, range 31 east, not only as it was at the time of the survey in 1836, but as it was at the date of the patent to the State in 1852; and the patent from the State of Louisiana to White also passed the title for this same township as it was at the date thereof in 1890; so that neither the United States nor the State of Louisiana, its grantee, retained any interest whatever in the accretion formed between the date of the survey in 1836 and the date of the patent issued to White in 1890.

Leovy claims the ownership of certain sections in the township by virtue of patents issed by the State of Louisiana three years subsequent in date to the patent of White. Both he and White trace their title to the State of Louisiana, and the rule of law is well established that "where plaintiff and defendant both hold title from the State, the first purchase must prevail, if not successfully impeached." Cole vs. Thompson, 35 An. 1026; Bell vs. Hearne, 10 An. 515; 3 Rob. 295.

Leovy claims ownership of certain sections included within the township 22 south, range No. 31 east, previously patented to White by the State. It is a well recognized principle, both in logic as well as in law, that the greater includes the less, and the owner of a patent to a township takes all of the land within that township—every section therein, whether surveyed or unsurveyed, and no subsequent valid grant can be made by the State to any fractional portion thereof covered by the previous patent.

"*Priority of Patents—Evidence of Title.*—It is the almost universal rule of our courts to look to the elder patent in all questions of titles, and to give it effect. It is not for the court to look to any equitable claim on the general government which a third party might have in respect to lands conveyed to another person prior to the issuing of the patent.

"The elder patent must be impeached and vacated before any title can be set up under the younger one, and it cannot be impeached by parol proof. Letters patent are matters of record; they can alone be avoided in chancery by a writ of *scire facias* sued out on the part of the government or some one prosecuting in its name, or by a bill in chancery. The settled English practice is so, and we have no law or practice prescribing a different course. By an examination it will be found that the authorities, both English and American, speak of the case of two successive patents for the same thing, and that the second patent is void, though some differ as to which shall pursue the remedy to vacate either." Newell on Ejectment, Sec. 52, p. 468; Wirth vs. Brandon, 98 U. S. 118.

Respectfully submitted,

E. HOWARD McCALEB.

ADDENDA.

No. 75.] AN ACT

Entitled an act to readjust the State Land Office; appointment of a register; to fix his salary and the time and manner of paying said salary; to define the powers and prescribe the duties of the register; to fix the fees for certificates and patents, and disposition thereof; the price of lands and disposition of the proceeds; duties of the Auditor of Public Accounts, State Treasurer, Attorney General and the Governor; to provide for the payment of salary and expenses incurred in the State Land Office; to repeal all conflicting laws.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That there shall be established, under the provisions of this act, an office for the sale of public lands donated to the State by Congress, which office shall be administered by a register; said office to be located at the seat of government of the State of Louisiana.

SEC. 2. *Be it further enacted, etc.*, That the Governor, by and with the consent of the Senate, shall appoint, under the provisions of this act, a register, who shall hold his office for the term of four years, whose annual salary shall be fifteen hundred dollars, in full compensation for his services as register, payable quarterly by the Treasurer of the State, on the warrant of the Auditor of Public Accounts, said salary to be paid out of the swamp land fund only. He shall take the oath prescribed by the Constitution and laws, and give bond in favor of and to be approved by the Governor of Louisiana, with one or more good and sufficient sureties, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, which bond so approved shall be filed by the register in the office of the Secretary of State.

SEC. 3. *Be it further enacted, etc.*, That it shall be the duty of the register to keep accounts of the sales of lands donated to the State, in well bound books, with the number of the certificate issued therefor, setting forth the section, parts of sections, township and range, district and parish, to whom and when sold, and for what price, and shall cause to be marked on the official plats or maps on file in his office the

number of certificate, which books and maps shall be preserved as official records. It shall be the duty of the said register to furnish annually to the Auditor of Public Accounts, on or before the twentieth day of December of each year, a descriptive list, by parish, of all lands sold during the preceding year, together with all data that may be afforded by his records.

SEC. 4. *Be it further enacted, etc.*, That all money arising from the sale of warrants or public land shall be paid by the purchaser to the State Treasurer, on the warrant of the Auditor of Public Accounts, whose duty it shall be to warrant at once on the Treasurer of the State to receive said money within forty-eight hours after the issuance of the same by the Auditor.

SEC. 5. *Be it further enacted, etc.*, That the Register of the State Land Office shall, on the sale of lands or warrants, describe the same in his order on the Treasurer of the State to receive the money for said lands, and in no case shall an entry be made upon the books, maps or other official record until the receipt of the Treasurer, also describing the land or warrants, has been submitted and filed in his office; a violation of this section shall be deemed a felony, and upon conviction the party offending shall pay a fine of five thousand dollars and be imprisoned for a term not exceeding ten nor less than two years. It shall be the duty of the Auditor of Public Accounts to transmit, within forty days after the expiration of each fiscal year, the report of the register, mentioned in section three of this act, to the assessor of the parish wherein the lands may be situated, in order that they may be assessed for taxes.

SEC. 6. *Be it further enacted, etc.*, That the register shall collect from parties purchasing lands the sum of twenty-five cents for each certificate of forty acres, the sum of fifty cents for each certificate of eighty acres, the sum of one dollar for each certificate of one hundred and sixty acres, and the sum of two dollars for each certificate of three hundred and twenty acres, and the sum of four dollars for each certificate of six hundred and forty acres, whenever such certificates are issued by him; and he shall charge and collect the sum of two dollars for each patent prepared by him and signed by the Governor; and that the fees charged and collected by the said register, under this act, shall be received by him for the use and benefit of the State, and shall be paid quarterly by the said register to the Treasurer, who shall credit the appropriate land fund of the State with the same.

SEC. 7. *Be it further enacted, etc.*, That the Treasurer, as receiver of the State Land Office, from and after the promulgation of this act, shall deliver to the purchaser or his agent, a receipt, which shall contain a correct description, by section, township and range, of the lands sold by the State, for which said Treasurer shall receive no extra compensation.

SEC. 8. *Be it further enacted, etc.*, That persons holding legally issued outstanding unlocated school, internal improvement or other State land warrants, or who have heretofore entered, located or purchased, or who may hereafter locate or purchase school or internal improvement warrants of the State of Louisiana, legally issued, and where the location, entry or purchase has been rejected by the United States, on land belonging to the general government, he or they shall have a right hereafter to locate said warrant on any lands belonging to the State.

SEC. 9. *Be it further enacted etc.*, That the Attorney General of the State of Louisiana shall give his opinion and counsel to the said register, whenever requested, in any matter pertaining to the duties or business of the said register's office.

SEC. 10. *Be it further enacted, etc.*, That the public lands, donated by Congress to the State of Louisiana, shall be subject to entry and sale, at the rate of seventy-five cents per acre for any number of acres; and any person making affidavit that he or she enters for his or her own use, and for the purpose of actual settlement and cultivation, and together with the said entry, he or she has not acquired from the State of Louisiana, under the provisions of this or any act graduating State land, more than one hundred and sixty acres, according to the established surveys, shall be allowed to enter one hundred and sixty acres at the rate of twelve and one-half cents per acre.

SEC. 11. *Be it further enacted, etc.*, That the public lands donated by Congress to the State of Louisiana, designated as sea marsh or prairie, subject to tidal overflow, so as to render them unfit for settlement and cultivation, shall be subject to entry and sale at the rate of twelve and a half cents per acre; *provided*, that satisfactory proof of said fact be filed with the Register of the State Land Office.

SEC. 12. *Be it further enacted, etc.*, That the Register of the State Land Office shall be authorized, and it shall be his duty to administer any oath or oaths which may be required by law in connection with the duties of his office.

SEC. 13. *Be it further enacted, etc.*, That all salaries and expenses incurred under the provisions of this act shall be paid by the Treasurer of the State of Louisiana, on the warrant of the Auditor of Public Accounts, out of the swamp land fund, and no other.

SEC. 14. *Be it further enacted, etc.*, That it shall be the duty of the Governor when applied to, to issue patents for all lands sold, on presentation of the Treasurer's receipt and for lands located by warrants, whenever he shall be satisfied that the same have been legally sold and located.

SEC. 15. *Be it further enacted, etc.*, That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed, and that this act shall take effect from and after its promulgation.

(Signed) R. N. OGDEN,
Speaker of the House of Representatives.

(Signed) S. D. McENERY,
Lieutenant Governor and President of the Senate.

Approved April 7, 1880.

(Signed) LOUIS A. WILTZ,
Governor of the State of Louisiana.

A true copy:

WILL A. STRONG,
Secretary of State.

FILED,
APR 1 1899
JAMES H. McKENNEY,
CLERK.

No. 232.

Brf. of Leovy, Leovy & Morse for D.C

Filed April 1, 1899.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 232.

R. M. WHITE

versus

A. F. LEOVY ET ALS.

BRIEF FOR DEFENDANT IN ERROR.

HENRY J. LEOVY,
VICTOR LEOVY,
Alexander Porter Morse, *Attorneys for Defendants.*

Thomason, Print., 536 Natchez Street, N. O.

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BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

This case is one of alleged conflict in patents to land, both issued by the State of Louisiana. Both parties claim from the State and admit and aver the title of the State, their vendor.

In the year 1890, Township Twenty-two South, Range Thirty-one East, of the Southeastern Land District of Louisiana, a township situated in the Parish of Plaquemines, on the west bank of the Mississippi River, about seventy-five miles below New Orleans, contained about twenty thousand acres of land; the remainder of the township being shallow bays and passes. This is abundantly proved by the testimony of a surveyor, who made the survey for the express purpose (Bradford, Rec. p. 42), and of R. S. Leovy, a nominal defendant and an old resident (p. 49), and by a survey made and introduced in evidence by

White, and valuable at least as an admission; and by Connelly's map, showing about 3840 acres in the front part of the township, and defendants' patents to 5020 acres, in the rear of the township; and by much other evidence. The fact is notorious and beyond dispute.

All this land, except a narrow strip on the river, not concerned in this suit, belonged to the State of Louisiana. It was acquired by grants of the swamp lands by Acts of Congress of 1849 and 1850 (9 Stat. at Large, pp. 352, 519), and was decided to be grants *in praesenti*. (Wright vs. Rosebery, 121 U. S. 488). Both parties, however, claiming from the State, its title is not at issue and it has never been questioned, though the State has sold immense tracts of the lands. The only map of it, however, in the State Land Office, in 1890, was one made by Connelly, a United States Surveyor, in 1836. This map showed a narrow line of small lots fronting on the river surveyed by Connelly; a tract of sea-marsh behind these small lots of about 3840 acres in extent (estimated but not surveyed), covering about one-fifth of the width, and, behind this sea-marsh a shallow, narrow Bay, marked "West Bay." No other land was shown on the plat, which did not pretend to reach the rear of the township, the corners of which had been established by Connelly. There is no question that this plat accurately indicated the conditions *at the time* of Connelly's survey. There is, likewise, no question that shortly subsequent to his survey, and long prior to 1890, a crevasse occurred which was never closed and, in the course of a few years, filled the rear of the township with shallow marsh or prairie land.

It remains to explain that this being the condition of

facts in 1890, the Land Register was at that time (by Act of 1880, p. 85) authorized to sell the low marsh or prairie lands in Louisiana at twelve and a half cents per acre; and by that Act it was required that he designate the land sold, as usual, by township, section and fractional section. Under this law the whole Connelly tract of sea-marsh could be sold for about four hundred and eighty dollars ($480), and the whole township, if of the marsh or prairie kind, for about three thousand dollars.

Under these conditions of law and fact, R. M. White bought, in 1890, 3840 acres of land from the State Land Register. He paid for it at the rate of twelve and a half cents per acre; and his name, as the purchaser, was written on the Connelly plat of sea-marsh, between the tract designated thereon as West Bay and the small front lots.

His patent reads as follows:

"All the unsurveyed marsh west of lots fronting on the right bank of the Mississippi except Section No. 16, in township twenty-two south, of range thirty-one east, in the Southeastern (west of the river) land district, *containing thirty-eight hundred and forty acres*, according to the *official plat* of the survey of said lands in the State Land Office." (p. 65).

The field notes of Connelly are also in evidence, and they show that, while making a careful survey of the little front lots, his diagram of the strip of marsh between them and West Bay, as it then existed, was founded on estimation, the marsh being then impassable.

It will thus be seen that the Connelly strip corresponds with the White patent in every particular; White's name being marked on it, with *references to the patent* and certificate; the price and number of acres corresponding;

and it being the only unsurveyed sea-marsh shown on the only map of survey of that township in the State Land Office at the time White purchased. And the *price*, as shown by his receipt filed by White was for 3840 acres and fees of land office. (p. 21). He did not pay for an acre more. A similar patent in the adjoining township (in which White was the vendor of the defendant) was precisely so construed in the case of State vs. Buck, 46 Louisiana Annual, p. 656.

Some years thereafter Henry J. Leovy purchased and paid for, by description, by section and quarter section, certain lands in the rear of the township. (p. 54). It necessarily results from the numbers of these sections that they are in the rear (or western part) of the township. The patents recite that they were made with reference to an official map of survey. We think, therefore, there can be no objection to our stating the fact that a survey had been made in the meantime. The official statement in the patent, uncontradicted by any evidence, is conclusive on that point.

It necessarily results from these facts (as stated by the State Supreme Court), that between the rear of the Connelly tract of sea-marsh and nearly all of Mr. Leovy's purchases, about two miles intervened. In no case did they touch the Connelly patent.

Under these circumstances, R. M. White brought suit in the year 1893 in the local State Court for Plaquemines Parish, alleging that H. J. Leovy (and A. F. Leovy and R. S. Leovy, nominal defendants) had slandered the title to his lands. He gave an exceedingly vague description of the lands claimed by him; but, subsequently, by supplemental petition, made his claim more definite by annexing the Connelly map and field notes, and by adding to his peti-

tion the words, "containing 3840 acres, according to the official plat of the survey of said lands in the State Land Office."

Defendant answered, denying any trespass upon or slander of title to the lands so described, and alleging, in counter-claim or reconvention, trespass upon and slander of title to the lands of defendant above described, and situated far in the rear of plaintiff's lands.

As the plat filed and repeatedly relied on in evidence by Mr. White bore his name on the Connelly tract of sea-marsh, and designated the land behind it as West Bay, and was referred to in the patent as part of his description of the land sold, and as Mr. Leovy claimed lands far in the rear of the Connelly tract, it would seem that there could be no possible conflict between their claims. The District Judge practically so held, granting to each an injunction in the line of his respective pleadings.

The *case so remained for three years*, and, in the meantime, by an act *in pais*, R. M. White still further made manifest that he claimed, under his patent, only the Connelly tract. He bought from the State on March 12th, 1896, a part of a section of sea-marsh, in the rear of the township, immediately adjoining that of Mr. Leovy. (Rec. p. 66).

Three years after, however, the personnel of the Parish Court having changed, White forced the case to a final trial; and the Court thereupon dismissed defendant's counter-claim and made plaintiff's injunction final, amending it by eliminating the words "according to official plat," although those words had been deliberately introduced by plaintiff into his supplemental petition; thus giving him a

roving title to 3840 acres of sea-marsh to be located anywhere in the township. From this decision the defendants appealed; and it was reversed by a unanimous Court; the State Supreme Court deciding that the patents of plaintiff and defendants were for two distinct tracts of land widely separated; that Mr. Leovy had never slandered title to, or trespassed upon Mr. White's lands; and, therefore, dismissing White's suit, and maintaining defendant's title to the lands patented to him.

The decision was precisely the same as that in the case of the State vs. Buck et als. (46 La. An., p. 646), involving the same points and referred to by the Court as disposing of them.

From this judgment White has sued out this writ of error.

The Law.

As to Existence of Federal Questions, and Jurisdiction of this Court.

The claims of plaintiff in error as to the existence of Federal questions in the case, relate, in the first place, to some alleged impairment of the obligation of the contract of sale. As there was, at no time, from a period prior to the purchase by Mr. White, to a period subsequent to all the purchases by Mr. Leovy, any change whatever in the laws of Louisiana in anywise relative to this subject, and as there has been no complaint as to any action by anybody or officer possessing powers remotely resembling legislative powers, it would seem too clear for discussion that the clause prohibiting the States from passing any law impairing the obligation of contracts could not have been vio-

lated. See Lehigh Co. vs. Easton, 121 U. S. 388, and numerous cases therein cited.

The second contention is that the act of the Land Register in issuing a patent to Mr. Leovy divested Mr. White, "without due process of law," of his title to the land in question.

It might be conceded, for the sake of argument, that an action by an administrative officer, actually dispossessing any person of life, liberty or property, or even such action as must be by the State Courts regarded as *res judicata* upon the question settled thereby, would, if taken without due process of law, be violative of the 14th Amendment to the U. S. Constitution. But we submit that the mere erroneous issuance of a second patent could not be an action of this character. Such a paper, if in reality covering the same lands as a prior patent, would be worthless in every court as against the prior patent; particularly so in a case like the present, where no action was taken or attempted, cancelling the prior patent.

The law, as above stated, is drawn from two late decisions of this Court, supported by many undisputed authorities. In Davidson vs. New Orleans, 96 U. S. pp. 97, 105, this Court said:

"It is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceedings applicable to such a case. This was clearly stated by this Court, speaking by the Chief Justice, in Kennard vs. Morgan (92 U. S. 480), and, in substance, repeated at the present term in McMillan vs. Anderson (95 *Id.* 37)."

And in Castillo vs. McConnico (168 U. S. 674), it was held, in substance, that in order to show that a litigant had been deprived of his property without due process of law, it was necessary to show that, under the State jurisprudence, the proceedings of which he complains were conclusive on the courts.

Now, in this very case, the Supreme Court of Louisiana, far from holding that a second patent was conclusive upon the courts, as against the first patent, expressly said, that if the patents related to the same lands, the second patent was utterly null and void, and it thereupon proceeded to discuss the purely local question previously decided in State of La. vs. Buck et als. (46 La. An. p. 656), as to the quantity of land conveyed by such a patent as that issued to White in this case. Deciding, as it did, that White's patent did not cover any of the land subsequently patented to defendant, the alleged Federal question was utterly eliminated from the case.

We submit that the case having been thus decided on a purely local ground, this Court has no jurisdiction. Dibble vs. Bellingham Co., 163 U. S. p. 63.

"It is likewise settled law that, where the record discloses that, if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment." Eustis vs. Bolles, 150 U. S. 361, 366, citing Klinger vs. Missouri, 13 Wall. 257, 263; Johnson vs. Risk, 137 U. S. 300; Murray vs. Charleston, 96 U. S. 432, 441; Jenkins vs. Lowenthal, 110 U. S. 222; Hale vs. Akers, 132 U. S. 554; Clay

vs. Smith, 3 Pet. 411; Beaupre vs. Noyes, 138 U. S. 397, 401, and many others.

This case is substantially similar to one in which an alleged owner of land should complain that it has been taken from him by an illegal assessment, or by judgment without citation or other unconstitutional proceeding; and the State Court should find that he had never owned the land and hence dismiss his claims. If parties so held to be without title were permitted to bring to this Court such suits, its docket would be filled with the vexatious proceedings of mere interlopers.

A large portion of the brief of plaintiff in error is devoted to an attempt, precisely similar to many others which have been fruitlessly made in previous similar cases before this Honorable Court, to introduce federal questions into the case, on the ground that the land in question was originally acquired by the State from the United States. As both parties admit this, and claim from the State, the title of the State to all the land in dispute is not, and never could be, in issue between them. We quote the following language, directly applicable, from the decision in Mace vs. Merrill (119 U. S. 581, 584):

"Both claim under the State. If Merrill actually did buy, as he says he did, the title of the State enured to his benefit, under the Act of Congress, as soon as it passed from the United States. If he did not, then, so far as the record discloses, Mace might have had the right to buy when he made application for that purpose. The determination of this question, as the case comes here, involves no Federal right in Mace which has been denied him by the decision of the court below. We consequently have no jurisdiction, and the cases of Romie vs. Casanova, 91 U. S. 379; McStay vs. Friedman, 92 U. S. 723, and Hastings vs. Jackson, 112

U. S. 233, are directly to that effect. Indeed, the case of Hastings vs. Jackson is strikingly like this in its material facts. The writ of ertor is dismissed for want of jurisdiction."

We quote the syllabus in the above case:

"As it appears that the right of the State of California to have the lands, which are in dispute in this action, listed is admitted, it is held that this Court is without jurisdiction over the judgment of the Supreme Court of California upon the adverse claims of the parties. Hastings vs. Jackson, 112 U. S. 233, affirmed."

ON THE MERITS.

1. The question of the meaning and construction of the patent to White is one of purely local law, and must be controlled by the jurisprudence of Louisiana. That jurisprudence has been settled by the case of State vs. Buck et als., 46 La. An. 656 *et seq*. What that case decided was, not that the State could recover a surplus of lands sold under such a patent, but that such a patent covered only the precise acreage called for therein, and that, where not properly described, it must be located by the map. That patent was precisely similar to this. As to identification by the map, and the *map being part of the patent*, the general jurisprudence is the same as that of Louisiana. See Craigin vs. Powell, 128 U. S. p. 691; Gazzam vs. Phillips, 20 Howard, 374; Hardin vs. Jordan, 140 U. S. 400.

2. There is, however, little need for construction in the matter. The only map in existence was Connelly's map, bearing upon it a diagram of surveyed lots and a tract of unsurveyed sea-marsh, which, as shown by a glance, cer-

tainly did not extend even to the middle of the township. This tract contained substantially 3840 acres. White bought 3840 acres of unsurveyed sea-marsh behind the front lots "as per official map;" his name was written on the Connelly map, with a reference to his patent; and he filed this map, with his name so on it, with his pleadings. This map, limiting his pleadings, does not even purport to reach to where Mr. Leovy's lands begin.

3. But if the map be disregarded, White's patent is not voidable, but absolutely void on its face, for utter uncertainty and flagrant violation of the law. Not only all prior legislation but the very Act under which White purchased expressly required that public lands be sold by township, section and fractional section. Public lands of the United States and of all the States are sold in this manner. If the map of Connelly, referred to in plaintiff's pleadings and patent, and filed in evidence, be considered, as in State vs. Buck et als., such a certain location might be considered as a substitute for the full legal description. But a township necessarily covers some 23,000 acres of space; and it would be manifestly illegal, on the face of a patent, either to convey the whole township, as containing 3840 acres, or to sell 3840 acres of it without locating them. Such a sale is bad, in Louisiana, as a private sale. 5 La. An. 511; 10 La. An. 170; 10 La. Rep. 58. But it would be flagrantly bad as to public lands, in the face of laws requiring full and accurate descriptions. It may be here noted, as an example of the confusion that would result from such methods, that the judgment of the District Court in favor of White (who bought only 3840 acres, and claimed in his supplemental petition only 3840

acres) not only ejected Mr. Leovy from some 5000 acres of land, in favor of White, but utterly failed to furnish any method of discriminating, in the future, White's lands from many thousands of acres not belonging to him, shown on a survey filed by his own surveyor. Yet this judgment still clung to the description of his land as 3840 acres; obviously because it would otherwise have been *ultra petitionem* and null on its face.

It seems clear, then, that to make out any distinct title at all for White it is necessary to have recourse to the Connelly map, and this is fatal to his claims. (As to need for description, see 4 Wheat. 488; 19 Howard, 342; 20 Howard, 372).

4. We have alluded again and again to White's pleadings as limiting his title. They are perfectly clear on this point; they clearly connect his title with the sea-marsh indicated in the Connelly plat; and taken in connection with his subsequent purchase of land in the rear of the township, show beyond dispute that his attempt to get a roving title with which to harass not only the defendant but all other future purchasers from the State was made only at the final hearing, after three years of litigation, in the face of patent, map, price, pleadings, evidence, and the jurisprudence, on the precise point, of the Supreme Court of Louisiana.

The Supreme Court decided, simply and purely, that White bought only 3840 acres of land, and that the boundary of his land was that fixed in the plat by which he bought, referred to in his patent, and thus made part of the patent itself. This involved no federal question.

As we have seen, all the issues of this case were pre-

sented in that of the State vs. Buck (46 La. An. 656). The words of the patent and the plan were the same, and his land adjoined the land claimed in this case. The patentee had bought a strip of sea-marsh, containing 1320 acres, and paid for only 1320 acres, and yet claimed the whole township, as plaintiff claims in this case. The Court disposed of plaintiff's contention in these words: "The Register sold to him 1320 acres of land at twenty-five cents per acre, *and that is the quantity the patent conveyed* to Packard, and no more." (Packard was plaintiff's vendor). It is inconceivable that the Register can convey more of the State land than the purchaser pays for. In this case plaintiff paid for 3480 acres, and asks to be recognized as owner of a whole township, including 5020 acres bought by the defendant; the remaining land belonging to the State.

Much of the swamp land granted to Louisiana by the Act of 1849 can be made valuable by judicious drainage for the cultivation of rice and, on the banks of the streams, for orange orchards and truck farming; for which, in the extreme South, the climate is peculiarly adapted.

Respectfully submitted,

HENRY J. LEOVY,

VICTOR LEOVY,

Alexander Porter Morse *Attorneys for Defendants.*

WHITE *v.* LEOVY.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 232. Submitted April 3, 1899. — Decided April 24, 1899.

From the statement of this case made by the Supreme Court of Louisiana in its opinion, quoted in the opinion of this court, it is manifest that no Federal question was passed upon by that court, but that its decision was put upon an independent ground, involving no Federal question, and of itself sufficient to support the judgment below; and this court therefore dismisses the writ of error.

THE case is stated in the opinion.

Mr. E. Howard McCaleb for plaintiff in error.

Mr. Alexander Porter Morse, Mr. Henry J. Leovy and *Mr. Victor Leovy* for defendants in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This is an action of jactitation or slander of title, and is here on error from the Supreme Court of the State of Louisiana. A motion is made to dismiss for want of jurisdiction in this court on the ground that no Federal question was decided. We think the motion should be granted.

Both parties, who were respectively plaintiff and defendants in the court below, derive title from the State of Louisiana by patents which were issued in execution of the grant to it of swamp and overflowed lands. Plaintiff's patent was prior in time to that of defendants, and it is claimed that by the issue of the latter the State "has attempted to impair the obligations of the contract between the State of Louisiana and the said Robert M. White, plaintiff herein, and deprive him of his property without due process of law, in violation of the Constitution and laws of the United States."

The title of the State must be assumed, and the contest is by which patent that title passed. It seems almost inevitable

that the questions hence arising would be state ones, and that the decision of the Supreme Court was confined to such a question is manifest from its opinion. 49 La. Ann. 1660.

After defining the action under the Louisiana laws, and stating upon whom the burden of establishing title devolved, it said:

"The description of the land which was purchased by the plaintiff, which was evidenced by the patent that issued to the plaintiff, is of the following tenor, viz.: 'All the unsurveyed marsh west of lots fronting on the right bank of the Mississippi, except section No. sixteen (16), in township twenty-two (22) south, of range thirty-one (31) east, in the southeastern west of the river land district, containing thirty-eight hundred and forty (3840) acres, according to the official plat of the survey of said lands in the state land office.'

"The number of the patent is 4058, and it states that the purchase was made with certificate No. 2251, N. S. L."

The plaintiff's petition, original and supplemental, contained the same description.

"The answer of the defendant H. J. Leovy," the opinion further says, "is to the effect that the land claimed by the plaintiff and called for by his patent 'was entered according to an official plat or survey made by G. F. Connelly in 1836, [and] . . . was all within a distance of less than two miles of the Mississippi River, and all territory to the west of that was at the date of that survey, and by the plat by which White claims to have bought, West Bay.

'That a few years after Connelly made said survey the Jump Outlet broke through, and the accumulation on the seaward side of said marsh and in said bay gradually raised the bed of said bay until the whole of said West Bay became marsh land, connecting with swamp land to the westward, and at the time of said lands being transferred to the State, in 1849 and 1850, by Congress it was not a navigable bay or part of the sea.'

"The answer then charges that the plaintiff, well knowing all these facts, and endeavoring to perpetrate a fraud upon the State, 'entered the lands originally allotted by Connelly, and

under his patent 4058 is endeavoring to claim over sixteen thousand (16,000) more acres in said township' than he is entitled to claim thereunder, and by 'a malicious suit now seeks to cast a cloud upon the title of others who have entered the western lands in said township . . . honestly and according to law, and who are in the peaceable and undisturbed possession of the same.'"

The answer of the other defendant was similar. And further—

"In *limine litis* plaintiff's counsel filed an exception and motion to strike out a portion of the defendant's answers on the ground that the official plat of survey of G. F. Connelly, United States surveyor, made in 1836, and on which his patent was based, cannot be questioned or impeached by the defendant, and this court is wholly without jurisdiction to determine whether same is or not erroneous. And that the said patent cannot be questioned or impeached by the defendant for fraud or error.

"That the United States Government, as the owner of the sea marsh adjacent to the seashore and to West Bay, 'acquired all the alluvian made by accretion to said lands between the years 1836 and 1850; and when said lands were granted by the United States Government to the State of Louisiana,' same passed to the State by the granting act of Congress, and that same passed to the plaintiff as patentee thereof, and 'that he acquired all of said lands as well as the accretions which were added thereto, as they were at the time they were granted by the United States to the State of Louisiana,' said granting act passing a fee simple title *in præsenti* to the State, not only as the land was at the time of the survey by Connelly in 1836, but as it was at the date of the grant, and that the whole was acquired by the plaintiff as patentee.

"His additional representation is that the plaintiff as patentee 'acquired *all of said lands* in township No. 22 south, range No. 31 east, on the southeastern west of the river land district, *according to the official survey of said lands in the state land office, as they were at the time they were granted by the United States* to the State of Louisiana.'"

The decision of the district court was in favor of the motion, and after comment on the ruling the Supreme Court said:

"Reduced to a last analysis, the pleadings present for our consideration and decision a purely petitory action, in which the defendant holds the affirmative side of the controversy and is bound to succeed on the strength of his own title, and in deciding the question of title we are to determine whether the patents which the State issued to H. J. Leovy, in 1893, reflect a title which is superior and paramount to the patent which the State issued to the plaintiff in 1890, to the extent that they conflict.

"This controversy is not so much with regard to the character or strength of the respective parties as it is with regard to the area or domain which the State actually and really conveyed to the plaintiff; for it is quite true and cannot be denied that the State was wholly without power to convey to the defendant H. J. Leovy any land in 1893 which she had previously sold to the plaintiff in 1890, without trenching upon the issues of error or fraud which were excluded from consideration. In other words, we are to determine from the evidence before us whether the plaintiff's patent covers and includes all the land in township twenty-two south, of range thirty-one east, in the southeastern land district west of the Mississippi River; for if it does, in fact, the patents which were subsequently issued to the defendant H. J. Leovy do not reflect a paramount title thereto."

The court then gave elaborate consideration to the views of the district court, expressing its dissent from them; also at great length reviewed the evidence and the land laws of the State and the descriptions of the respective patents, and concluded as follows:

"As, in our opinion, this controversy is quite similar to the one presented in *Buras* v. *O'Brien* — that is to say, one for the determination of the area of sea marsh which is covered by a state patent — our conclusion is that the plaintiff's patent 4058 does not extend to nor include the land which is called for by the patents which were subsequently issued by

the State to the defendant H. J. Leovy, and that consequently there is no conflict between them.

"Under the jurisprudence and statutes of this State governing the sale and entry of swamp and marsh lands, we think it our duty to consider all the provisions and recitals of patents issued therefor and to give same effect according to their tenor; and thus considering the patent of the plaintiff, we regard it as evidencing a sale by measure and not by estimation of quantity. We consider the words thereof 'containing 3840 acres' as limiting the words preceding, 'all the unsurveyed marsh west of lots fronting on the right bank of the Mississippi,' and that the reference made therein to 'the official plat of the survey of said lands in the state land office' was intended to verify and confirm the statement as to the character and extent of the area of land which was actually conveyed to the patentee.

"We are of the opinion that inasmuch as the plaintiff's patent 4058 calls for 'all the unsurveyed marsh west of lots fronting on the Mississippi, except section sixteen in township twenty-two,' he is not entitled to survey, select and appropriate all the dry land or swamp land above overflow in said township in order to make out the quantity of '3840 acres' he purchased.

"We are of opinion that inasmuch as the patent conveys 'all the unsurveyed marsh west of the lots fronting on the Mississippi,' those lots must be taken as the initial point from which the area is to be computed, same being the only fixed and definite boundary mentioned in the patent.

"Thus considering the law and the evidence, we are of opinion that there should be judgment in favor of the defendant H. J. Leovy maintaining his patents as reflecting the paramount title to the lands which are therein described, and perpetuating his writ of injunction."

It is manifest no Federal question was passed on by the court. Its decision was put upon an independent ground involving no Federal question and of itself sufficient to support the judgment. It merely determined the extent of the grant to the State, and, interpreting the contending patents

as conveyances, decided that the lands described in that of plaintiff did not embrace the lands in controversy, and that the lands described in that of defendant did embrace them. This was but the interpretation of written instruments, and if it were even apparent to us to be wrong, which we cannot say, we should nevertheless be without power to review it.

In *Remington Paper Co.* v. *Watson*, 173 U. S. 443, we had occasion to repeat and affirm the rule announced in *Eustis* v. *Bolles*, 150 U. S. 361, 370, "that when we find it unnecessary to decide any Federal question, and when the state court has based its decision on a local or state question, our logical course is to dismiss the writ of error."

The writ of error is dismissed.